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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~454~~ 180

OUACHITA COUNTY, PLAINTIFF IN ERROR,

vs.

JOSEPH C. WOLCOTT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED AUGUST 21, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 454.

OUACHITA COUNTY, PLAINTIFF IN ERROR,

vs.

JOSEPH C. WOLCOTT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Arkansas, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Joseph C. Wolcott, plaintiff, and Ouachita County is defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 1st day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and the Independence of the United States one hundred & second.

[SEAL.] RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America for the Eastern District of Arkansas.

Allowed by—

HENRY C. CALDWELL,
District Judge.

2 The execution of the foregoing writ of error appears by the schedule hereto annexed.

RALPH L. GOODRICH, *Clerk.*

Filed July 3, 1878.

RALPH L. GOODRICH, *Clerk.*

3 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 8th day of April, anno Domini one thousand eight hundred and seventy-eight, at the United States court-room, in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on July 1, 1878:

JOSEPH C. WOLCOTT
v.
OUACHITA COUNTY.

Comes the plaintiff by U. M. Rose, esq., his attorney, and comes the defendant by F. W. Compton, esq., its attorney, and the court being

now well and sufficiently advised of the matters arising on the demurrer to the answer, considers that the same be sustained, and the said defendant electing to stand on its said answer and declining to plead further, whereby said plaintiff's claim against it remains wholly undefended, and the plaintiff having exhibited and filed herein the county warrants on which this action is founded, and the court having inspected the same and the papers in the case, and being now well advised in the premises, it is therefore considered, ordered, and adjudged that said plaintiff do have and recover of and from said defendant the sum of four thousand three hundred and fifty-five dollars ($4,355.00) for his damages, together with all his costs in and about this suit expended.

4 United States circuit court for the eastern district of Arkansas

JOSEPH C. WOLCOTT
v.
COUNTY OF OUACHITA.

Present, Hon. John F. Dillon, circuit judge, and Hon. Henry C. Caldwell, district judge.

This is an action on county warrants. The defendant among other things pleaded in bar an act of the general assembly of the State of Arkansas, passed on the 6th day of January, 1857, in the following words:

SEC. 614. Whenever the board of supervisors of any county may deem it expedient to call in the outstanding warrants of said county, in order to redeem, cancel, reissue or classify the same, or for any lawful purpose whatever, it shall be the duty of said board to make an order for that purpose, fixing the time for the presentation of said warrants, which shall be at least three months from the date of such order, provided that said order for the calling in of said warrants shall not be made oftener than once in every three years.

SEC. 615. It shall be the duty of the clerk to furnish the sheriff with a true copy of said order, within ten days after the adjournment of said board, whereupon it shall be the duty of the sheriff to notify the holders of said county warrants to present the same to said board, at the time and place fixed as aforesaid, for redemption, cancelation, reissuance or classification of the same, or for any other purpose whatever specified in the order of said board, by putting up at the court-house door and at the election precincts in each township of said county, at least thirty days before the time appointed by the order of said board for the presentation of said warrants, a true copy of the order of said board
5 in the premises, and by publishing the same in newspapers printed and published in the State of Arkansas, for two weeks in succession, the last insertion to be at least thirty days before the time fixed by said board for the presentation of said warrants.

SEC. 616. All persons who shall hold any warrant of said county, and neglect or refuse to present the same as required by the order of the board and the notice aforesaid, shall thereafter forever be debarred from deriving any benefits from their claims.

The defendant's plea, setting up this statute bar, is in the following words:

That on the 4th day of January, A. D. 1876, the county court of said Ouachita County deemed it expedient, and in the manner prescribed by

law, made an order calling in all the then outstanding warrants of said county, including those set out in the complaint herein, for the purpose of examining, cancelling and reissuing the same, and in said order fixing Friday, the 7th day of April, A. D. 1876, as the time for the presentation of said warrants to said court by the holders thereof, as will more fully appear by a certified copy of said order attached to the original answer as part thereof, and marked Exhibit A, and now prayed to be taken as a part of this amended answer. That said order notified all persons holding warrants of said county that they might deposit their said warrants with the clerk of said court at any time prior to said 7th day of April, 1876, and that all persons holding warrants of said county and failing or refusing to present the same, as required by said order, on or before said 7th day of April, A. D. 1876, should thereafter be forever debarred from deriving any benefit from their claims on said county on account thereof. That the sheriff of said county notified all persons holding warrants against said county to present the same at the time and place fixed in said order for the purposes mentioned therein by putting a copy thereof on the court-house door in said county, and a copy at the election pre-
6 cinct of each township in said county, more than 30 days before the time fixed for such presentation, as will more fully appear from said sheriff's return, and accompanying copies or notices attached to said original answer, as Exhibits B, and here referred to and asked to be taken as a part of this amended answer, and by publication of the same in the Camden Beacon and the Arkansas Gazette, newspapers printed and published in the State of Arkansas, for two weeks in succession, the last insertion being more than 30 days before the said 7th day of April, A. D. 1876, as will appear from proofs of such publication attached to the original answer herein, as Exhibits C and D, and here referred to and asked to be taken as parts of this amended answer, and also by a certified copy of the finding and order of said county court, made on April 11th, 1876, hereto attached, as Exhibit E, and made a part of this answer. That on said January 4th, 1876, all the warrants sued on in this action were the property of one A. A. Tufts, who was then and has ever since been a citizen and resident of the State of Arkansas and of said Ouachita County, and that on or about February 14th, 1876, after said recalling order had been made and legal notice thereof given, and while proceedings were pending thereunder, said Tufts sold all of said warrants to one Henry M. Cooper, who was then and has ever since been a citizen and resident of the State of Arkansas. That said Tufts and Cooper, at the time of said sale, had both legal and actual notice of said recalling order, and expressly intended to defeat the same by suing upon said warrants in this honorable court, and that none of said warrants were ever presented by said Tufts or Cooper or any other person to said Ouachita County court, as required by law, and the order of said court, as aforesaid, and accordingly said warrants became void and were so declared by said county court, in an order made the 11th day of April, A. D. 1876, a certified copy of which is
7 hereto attached, marked Exhibit E, and made a part of this amended answer.

To this the plaintiff demurred on the ground that being a citizen of another State the statute above cited was not binding on him, and because having brought his suit herein prior to the time of the sitting of the county court of said county, at which said scrip was to be brought in under the order of said county court, the plaintiff was not bound to produce his said warrants in said county court, but might bring his suit in this court; on which question the opinions of the judges were opposed.

Whereupon, on motion of the defendant, by his counsel, that the point on which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the supreme court to be finally decided, it is ordered that the foregoing state of the pleadings and the following statement of facts which is made under the direction of the judges be certified according to the request of the defendant by her counsel and the law in that case made and provided. That this suit was brought on 55 pieces of county warrants of said county, dated at divers dates in the year 1874. To which defendant pleaded as above. The circuit judge was of opinion that as the plaintiff was a citizen of another State and brought the present suit on the 10th day of March, 1876, and before the time fixed for bringing in said warrants under the order of said county court, the said warrants are not barred under said statute; but the district judge was of opinion that on the facts pleaded the warrants sued on should have been brought into the county court under said order, and that as plaintiff failed to comply with said order, the present suit cannot be sustained; whereupon the court sustained said demurrer, and the defendant declining to plead further, final judgment was rendered for the plaintiff.

JOHN F. DILLON.
HENRY C. CALDWELL.

8 And on July 3, 1878, as follows:

JOSEPH C. WOLCOTT
vs.
OUACHITA COUNTY.

And now comes the defendant, by F. W. Compton, esq., its attorney and files herein its writ of error and citation, which are signed and allowed by the court.

Which citation is as follows:

9 The United States of America to Joseph C. Wolcott, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Arkansas, wherein Ouachita County is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Henry C. Caldwell, judge of the district court, this 1st day of July, A. D. 1878.

[SEAL.] HENRY C. CALDWELL,
District Judge.

I hereby acknowledge service of the within citation.

U. M. ROSE,
Att'y for Wolcott,
By J. M. ROSE.

10 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing to be a true, correct, and compared copy from the minutes.

In witness whereof I have hereunto set my hand and the seal of said court this third day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second.

Attest:

[SEAL.] RALPH L. GOODRICH, *Clerk.*

(Indorsement on cover:) No. 454. Ouachita County, plaintiff in error, vs. Joseph C. Wolcott. E. Arkansas C. C. U. S. Filed 21st August, 1878.

OFFICE SUPREME COURT U. S.
FILED
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JAMES H. McKENNEY, Clerk.

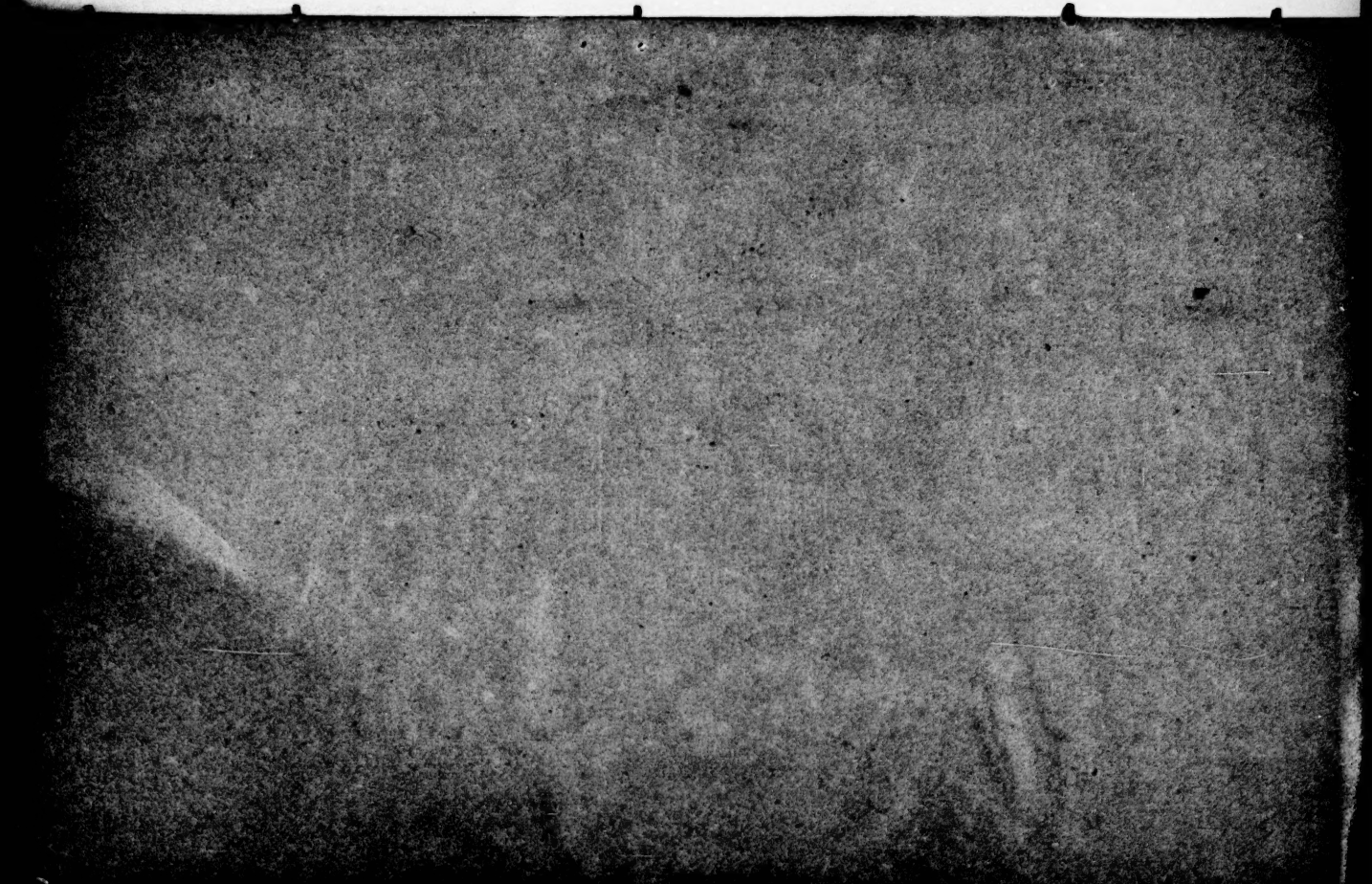
IN THE

SUPREME COURT

OF THE UNITED STATES.

OUACHITA COUNTY,
Plaintiff in Error,
vs.
JOSEPH C. WALCOTT,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.



IN THE

SUPREME COURT

OF THE UNITED STATES.

OUACHITA COUNTY,
Plaintiff in Error,
vs.
JOSEPH C. WALCOTT,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

This was an action brought in the Court below, on the 10th day of March, 1876, by Joseph C. Walcott, against Ouachita County, on fifty-five county warrants of said County, dated at divers dates in the year 1874, to which the defendant pleaded in bar, among other things, an Act of the General Assembly of the State of Arkansas, passed on the 6th day of January, 1857, in the following words:

"SECTION 614. Whenever the Board of Supervisors "of any County may deem it expedient to call in the "outstanding warrants of said County, in order to re- "deem, cancel, reissue, or classify the same, or for any "lawful purpose whatever, it shall be the duty of said

"Board to make an order for that purpose, fixing the "time for the presentation of said warrants, which shall "be at least three months from the date of such order; "Provided, That said order for the calling in of said "warrants shall not be made oftener than once in every "three years.

"SECTION 615. It shall be the duty of the Clerk to "furnish the Sheriff with a true copy of said order with- "in ten days after the adjournment of said Board; "whereupon it shall be the duty of the Sheriff to notify "the holders of said county warrants to present the "same to said Board, at the time and place fixed as "aforesaid, for redemption, cancellation, reissuance, or "classification of the same, or for any other purpose "whatever, specified in the order of said Board, by put- "ting up at the court-house door and at the election "precincts in each township of said County, at least "thirty days before the time appointed by the order of "said Board for the presentation of said warrants, a true "copy of the order of said Board in the premises, and "by publishing the same in newspapers printed and "published in the State of Arkansas for two weeks in "succession, the last insertion to be at least thirty days "before the time fixed by said Board for the presenta- "tion of said warrants.

"SECTION 616. All persons who shall hold any "warrants of said County, and neglect or refuse to pre- "sent the same as required by the order of the Board "and the notice aforesaid, shall thereafter be forever "debarred from deriving any benefits from their claims."

The answer of the defendant, setting up the statute bar, is in the words following:

"That on the 4th day of January, A. D. 1876, "the County Court of said Ouachita County deemed it "expedient, and, in the manner prescribed by law, "made an order calling in all the then outstanding war- "rants of said County, including those set out in the "complaint herein, for the purpose of examining, can- "celing and reissuing the same, and, in said order, fix- "ing Friday, the 7th day of April, A. D. 1876, as the "time for the presentation of said warrants to said "Court by the holders thereof, as will more fully appear "by a certified copy of said order, attached to the origi- "nal answer as part thereof, and marked Exhibit 'A,' "and now prayed to be taken as a part of this amended "answer. That said order notified all persons holding "warrants of said County that they might deposit their "said warrants with the Clerk of said Court at any time "prior to said 7th day of April, A. D. 1876, and that all "persons holding warrants of said County, and failing "or refusing to present the same as required by said "order, on or before said 7th day of April, A. D. 1876, "should thereafter be forever debarred from deriving "any benefit from their claims on said County on ac- "count thereof. That the Sheriff of said County noti- "fied all persons holding warrants against said County "to present the same at the time and place fixed in said "order for the purpose mentioned therein, by putting a "copy thereof on the court-house door in said county "and a copy at the election precincts of each township "in said County, more than thirty days before the time "fixed for such presentation, as will more fully appear

" from said Sheriff's return and accompanying copies of " notices attached to said original answer, as Exhibit " 'B,' and here referred to and asked to be taken as a " part of this amended answer, and by publication of the " same in the Camden Beacon and the Arkansas Ga- " zette, newspapers printed and published in the State " of Arkansas, for two weeks in succession, the last in- " sertion being more than thirty days before the said " 7th day of April, A. D. 1876, as will appear from proofs " of such publication attached to the original answer " herein as Exhibits 'C' and 'D,' and here referred to " and asked to be taken as parts of this amended answer, " and also by a certified copy of the finding and order " of said County Court, made on April 11th, 1876, " hereto attached as Exhibit 'E,' and made part of this " answer. That on said January 4th, 1876, all the war- " rants sued on in this action were the property of one " A. A. Tufts, who was then and has ever since been a " citizen and resident of the State of Arkansas and of " said Ouachita County, and that on or about February " 14th, 1876, after said recalling order had been made, " and legal notice thereof given, and while proceedings " were pending thereunder, said Tufts sold all of said " warrants to one Henry M. Cooper, who was then and " has ever since been a citizen and resident of the State " of Arkansas. That said Tufts and Cooper at the time " of said sale had both legal and actual notice of said " recalling order, and expressly intended to defeat the " same by suing upon said warrants in this Honorable " Court, and that none of said warrants were ever pre- " sented by said Tufts or Cooper, or any other person, " to said Ouachita County Court, as required by law

"and the order of said Court as aforesaid, and accord-
"ingly said warrants became void, and were so declared
"by said County Court in an order made the 11th day
"of April, A. D. 1876, a certified copy of which is hereto
"attached, marked Exhibit 'E,' and made a part of this
"amended answer."

In order to explain a seeming inconsistency between the Act of the General Assembly and the defendant's answer as above quoted, it is proper to remark that in the Act of January 6th, 1857, the words "County Court" were used instead of the Board of Supervisors, but afterwards, to-wit, the 3d of April, 1873 County Courts were abolished, and a new tribunal named Board of Supervisors was substituted therefor and vested with the powers and jurisdiction of the County Court. Afterwards, in Digesting the Statutes of Arkansas, the Digester used the words Board of Supervisors in lieu of County Court, and from this Digest the Act is copied as above instead of from the original Act. On the 30th day of October, 1874, Boards of Supervisors were abolished by the Constitution, and County Courts were substituted therefor and vested with the powers and jurisdiction of the Board of Supervisors. See Sections 374 and 395 of Gantt's Digest of the Statutes of Arkansas, and Constitution of the State of Arkansas, Sec. 28, Art. 7, and Sec. 23 of Schedule.

To the answer of the defendant plaintiff demurred, on the ground that being a citizen of another State the Statute pleaded was not binding on him, and because having brought his suit herein prior to the time of the sitting of the County Court of said County at which

said warrants were to be brought in under the order of said County Court, the plaintiff was not bound to produce his said warrants in said Court, but might maintain an action on the same in the United States Circuit Court without doing so.

As above seen, the order of the County Court requiring the warrants to be produced in that tribunal on the 7th day of April, 1876, for the purposes mentioned in the order, was made on the 4th day of January, 1876, and due notice thereof given; suit was brought on the warrants on the 10th day of March, 1876, and while the proceedings under the order of the County Court were pending; the warrants were never presented to the County Court as required by law; and by an order of said Court, entered on the 11th day of April, 1876, said warrants were declared to be forever barred.

It is insisted for the plaintiff in error, that the Act of the General Assembly above quoted, being in force at the time the warrants sued on were issued, the provisions of the Act entered into and formed a part of the contract between the County and the holder of its warrants, as if they had been expressly referred to or incorporated in its terms. And this rule embraces those provisions of the Act which affect the validity, construction, *enforcement* and *discharge* of the contract.

Edwards vs. Keazey, 6 Otto, 595.

Von Hoffman vs. Quincy, 4 Wall, 552.

McCracken vs. Haywood, 2 How., 612.

Parsel vs. Barnes, 25 Ark., 261.

Such being the contract between the parties, upon what principle and by what authority can the holder of the warrants in this case excuse himself from a compliance on his part with the terms of the contract by bringing suit in the Circuit Court of the United States? The statute contains no exceptions in favor of citizens of other States, nor does the contract, as evidenced by the county warrants, undergo any change *in its terms* on reaching their hands—it remains the same everywhere. No matter into whose hands it passes, or in what Court suit is brought, whether State or Federal, the holder can never recover on it, if he fails to respond to the call of the County Court made at any time before the warrant is merged into a judgment; and the reason is that, by the *terms of his contract,* he has bound himself so to respond or forfeit his right to recover. To dodge into the United States Court after the call made, as was done in this case, is unavailing. Nor does the statute interfere in any way with the jurisdiction of the Courts of the United States. The question here presented is not one of jurisdiction, as in Suydam vs. Broadnox, 14 Peters, 67, Payne vs. Hook, 7 Wall, 425, and similar cases decided by this Court.

In Suydam vs. Broadnox, supra, the contract sued on was made in the State of New York, and, of course, the particular statute law of Alabama did not form a part of it. But, if it had been otherwise, the statute merely regulated the *remedy,* and did not affect the *rights of the parties under the contract;* and the Court decided that a State law could not deprive a Federal Court of jurisdiction to try a case in which the plaintiff was a non-resident. No question as to the rights of the parties, under the law

of the contract, was involved or decided. And in Payne vs. Hook, supra, it was held that the laws of Missouri, divesting her courts of equity jurisdiction in cases of administration of estates, and conferring exclusive jurisdiction on courts of probate, could not divest the Courts of the United States of their chancery jurisdiction in such cases; but it was not decided, nor anywhere intimated, in the opinion of the Court, that the measure of the plaintiff's rights in the estate was greater than that of any local creditor or distributee. The Court took jurisdiction over the administrator, not to increase or diminish the rights of any one in the estate, but to compel him to execute the trust reposed in him, by paying each creditor and distributee that portion of the assets of the estate to which, under the laws of Missouri he was entitled

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risdiction of the Court in the case at bar but it does not follow that because the jurisdiction the plaintiff is therefore entitled to recover judgment on the warrants. The answer is in *bar* of the action. It sets up facts from which it appears that the obligation of the County, growing out of the terms of a contract between it and the plaintiff, has been *discharged* by reason of the non-performance by the plaintiff of a condition upon which his right to *enforce* such obligation depends. The right of the plaintiff to sue in the courts of the United States and his obligation to perform the condition in his contract have no necessary relation to or dependence on each other—they are separate and distinct.

In Parsel vs. Barnes, supra, the Supreme Court of Arkansas held that the Act of the General Assembly of

the 6th of January, 1857, above cited, is constitutional, and that warrants not presented as required by order of the County Court, made in pursuance of the Act, are forever barred. The Court said:

"None of the parties to this suit question the proposition that the existing law is as much a part of the contract as are the stipulations expressed in the agreement. Should individuals, by express contract, stipulate that the one should acknowledge an indebtedness to another, upon the condition only that he have a discretion left him that the obligation given be presented to him at a time specified, or that he should name a time and place at which he should have the privilege of redeeming or renewing the same, and in case the holder refused to present the same he should forfeit the claim, it certainly would not be insisted that such contract was unconstitutional, illegal or void, by reason of such stipulations between the parties. Can it be so when the law, which is admitted to be part of the contract, fixes such conditions and restrictions? If individuals can be so bound, a community at large, acting through their corporate officers or agents, would have equal privilege, and if the county scrip occupied precisely the same grounds as bills of exchange, which is by no means admitted, the holder could not justly complain, because the law was public, was a part of his contract, and he had full notice of its restrictions, terms and conditions, at the time the scrip was issued and came into his hands, and he accepted the scrip with such conditions in law attached, and he is bound thereby."

The fact that suit was brought in the Circuit Court before the day fixed for the presentation of the warrants to the County Court did not make the performance by the plaintiff of this condition impossible or unlawful. Pending the action in the Circuit Court he could have presented the warrants to the County Court, and after it had acted he could have proceeded with his suit. The County Court, as has been seen, had, in the exercise of its proper jurisdiction, made its order calling in the warrants before the commencement of the suit in the Circuit Court, and before issue made in the latter Court had entered its final order declaring the warrants to be barred. It would seem that such action by the State court ought not to be disregarded; but should be recognized as a legitimate enforcement of the law of the State, and of the contract between the parties, as they made it and were bound by it.

Respectfully submitted,

F. W. COMPTON,

Attorney for Plaintiff in Error.

A. H. Garland
of Counsel.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OUACHITA COUNTY, *PLAINTIFF IN ERROR*,

vs.

JOSEPH C. WOLCOTT, *DEFENDANT IN ERROR.*

Error to the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR DEFENDANT IN ERROR.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OUACHITA COUNTY, PLAINTIFF IN ERROR,
vs.
JOSEPH C. WOLCOTT, DEFENDANT IN ERROR.

Error to the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR DEFENDANT IN ERROR.

Wolcott sued Ouachita county on county warrants.

Regarding such warrants a statute was passed in 1857, copied in the record at page 4.

This act provides in short that the Board of Supervisors of any county may call in all outstanding warrants every three years, for classification, cancelling or re-issue. Notice of the

call is to be given by advertisement; and the owners of warrants that are not presented as required by the notice, shall thereafter forever be debarred from deriving any benefit from their claims. The act is stringent, and is not entitled to a liberal construction.

The county defended under this act, and pleaded a call made by the county court of the county (which had in the meantime succeeded to the jurisdiction of the Board of Supervisors), on the 4th January. 1876, requiring the owners of the warrants outstanding to present them on the 7th day of the next April. The answer alleged that at the time of the making of the call, and of the advertisement under it, the warrants sued on were the property of one Tufts, who was a citizen of the State, who sold them to one Cooper, on or about the 14th of February, 1876, Cooper being also a citizen of the State; and that both Tufts and Cooper had actual notice of the order, and intended to defeat it by suing on the warrants in the court below. That the warrants were not presented to the county court as required; for which reason they became void, and were so declared by the county court.

Plaintiff demurred: There was a certificate of division on the law arising on the demurer, and the defendant brought error. A statement of the proposition at once relieves the mind of any anticipated pain of suspense or doubt.

Admitting the proceeding under the statute to be in the nature of a suit, the doctrine of *lis pendens* could not apply to choses in action such as were sued on.

County of Warren, v. Marcy, 97 U. S., 107.

The power given by the statute to call in the warrants was for the purpose of passing on their validity; and not a power to cancel them arbitrarily. Any question that could be presented in the course of the proceeding would be a judicial question. The statute did not purport to bar the jurisdiction

of the Federal Courts; and if it had it would have been unprevailing.

Doyle v. Continental Ins. Co., 94 U. S., 535.

The pendency of a suit in a State court would not abate a suit on the same cause of action in the Federal Court.

Loring v. Marsh, 2 Cliff, 311.
Cook v. Burnley, 11 Wall, 668.
Lyman v. Brown, 2 Curt. 494.

But in no event could the proceeding under the statute bind a citizen of another State who had not become voluntarily a party to it.

Gilman v. Lockwood, 4 Wall, 410.
Baldwin v. Hale, 1 Id, 223.

It would not make any difference whether the law were prior or subsequent to the date of the paper sued on, as the law has no extra-territorial force.

Ogden v. Saunders, 12 Wheat, 133.

Respectfully,
U. M. ROSE.

TES.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 996.

THE TOWNSHIP OF HARTER, APPELLANT,

vs.

EDWARD RUTZ, TREASURER OF THE STATE OF ILLINOIS, JOHN A. KERNOCHAN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 15, 1880.

SUPREME COURT OF THE UNITED STATES.

No. 996.

THE TOWNSHIP OF HARTER, APPELLANT,

vs.

EDWARD RUTZ, TREASURER OF THE STATE OF ILLINOIS, JOHN A. KERNOCHAN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, judge of the district court of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, pro tempore, sole judge of said court, on Thursday the 26th day of August, at the June term of said court in the year of our Lord eighteen hundred and eighty, and of our Independence the one hundred and fifth year.

J. A. JONES, *Clerk.*

THE TOWNSHIP OF HARTER, JAMES M. WILLiams, & W. S. Walker *v.* EDWARD RUTZ, TREASURER OF ILLINOIS; Thomas B. Needles, auditor of Illinois; Richard J. Burns, county clerk of Clay County; Edward H. Hawkins, treasurer of Clay County; John Lowman, collector of Harter 2 Township; Rolla B. Henry, supervisor of said township; J. W. Anderson, clerk of said township; Jesse Lawrence & Jerry F. Wilcox, justices of said township; John A. Kernochan & the unknown owners & bondholders of the bonds and coupons described in complainants' bill.	5897.	In equity.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Original papers & orders from Clay.

Be it remembered that heretofore, to wit, on the 17th day of April, in the year of our Lord eighteen hundred and eighty, came the complainants and filed in the office of the clerk of said court all of the original papers filed in the circuit court of Clay County, Illinois, and a transcript of all proceedings thereon had in said court, which are in the words and figures following, to wit:

Bill.

STATE OF ILLINOIS,
Clay County, ss:

In the circuit court. October term, A. D. 1877.

To the honorable the judge of the circuit court of the State of Illi-
3 nois within and for said county; in chancery sitting:

Respectfully represent unto your honor, your orators the township of Harter, in the county of Clay aforesaid, and James M. Williams and W. S. Walker, residents and tax payers in said township, who sue in their own behalf, and in behalf of all the tax payers in said township who claim the benefits of this bill and are willing to contribute toward the expense of maintaining the same, that heretofore, to wit, on the 10th day of November, A. D. 1868, a certain railway company, created and existing under the laws of the State of Illinois, and known and designated under the name and style of the Illinois Southeastern Railway

Your orators further represent that the supervisor and town clerk, without warrant or authority of law, on, to wit, the first day of April, A. D. 1870, issued to the Illinois Southeastern Railway Company twenty bonds of the denomination and calling for one thousand dollars each, and due and payable on the , which said bonds bear
9 interest at the rate of ten per centum per annum interest, payable on the first day of October and April in each and every year, which said bonds were afterwards, to wit, on the 31st day of May, A. D. 1870, registered in the office of the auditor of State, of the State of Illinois, and after the same were so registered said bonds were negotiated and are now held by divers and sundry persons whose names, places of residence, &c., are unknown to your orators, but your orators are informed and believe and therefore charge the fact to be that the holders of said bonds, and each and every of them, are citizens and residents of States other than the State of Illinois, and are not citizens and residents of the same State of your orators, your orators being citizens and residents of the State of Illinois.

Your orators further represent that said bonds were issued on the first day of April, A. D. 1870, by the supervisor and town clerk without corporate action, and without the authority or concurrence of the board of town auditors, and without the question of the issuing of said bonds and the donation thereof to the Illinois Southeastern Railroad Company having been first submitted to the legal voters of said town, in accordance with the provisions of the charter aforesaid of said railway company, nor in accordance with the amendment to said charter passed by the general assembly of the State of Illinois and in force the 24th
10 day of February, A. D. 1869; said amendment to the said charter requiring, as preliminary to the submission of the question to the legal voters of any town along or near the rout' of said railway making subscription or donation to aid in constructing and equipping said railway, among other things, that no such subscription or donation should be made until the same should be voted for, as required by said act.

Your orators further represent that, before the issuing of said bonds by the town Harter aforesaid, a written application signed by twenty-five legal voters of said township had not been presented to the clerk thereof as required by said act, and that no election was ordered by the clerk of said township, and notice thereof given as required by said act, and that no election was held, conducted, and returns thereof made, as required by said act.

Your orators further represent that no election was at any time held, conducted, and returns thereof made as required by said act, but that the only election that was held was the one held and conducted as a special town meeting on the 20th day of May, A. D. 1870, long after the issuing of said bonds, and that the same was not held for any of the purposes authorized by law or designated by said act, and that because thereof said election was illegal, unauthorized, and void.

11 Your orators further represent that at the time of the holding of said pretended election and at the time of the issuing of said bonds there were more than three hundred legal voters living in the township of Harter aforesaid that were legally entitled, under the laws of the State of Illinois, to vote at said election, and that said pretended election or special town meeting there were only seventy-nine votes cast in favor of issuing bonds in payment of said donation, and that because thereof and by reason of the illegalities aforesaid said bonds are void and not entitled to be registered under the provisions of an act entitled, "An act to fund and provide for paying railroad debts," &c., ap-

proved April 16th, A. D. 1869, and the auditor, by virtue of said pretended registration, had and has no authority to certify a special tax to the clerk of the county court of said county, as provided in said act.

Your orators further represent that the supervisor and town clerk of said township issued said bonds without warrant or authority of law to the Springfield, Illinois and Southeastern Railway Company, a corporation other and different than the corporation aforesaid to which said pretended donation was by the election first aforesaid authorized to be made, and that the said Springfield, Illinois and Southeastern Railway Company had no right or authority to receive said bonds, said bonds being issued by said supervisor and town clerk to the
12 railway last aforesaid in violation of the duties and trusts reposed in them by law, and without warrant or authority of law, and because thereof said township is not legally or equitably bound to pay the same, and that your orators are advised by counsel and believe that no tax can be legally levied by the State auditor or by the corporate authorities of said township with which to pay the principal and interest due and to become due on said bonds, and because thereof said bonds are void.

Your orators further represent that long before the 20th day of May, A. D. 1870, the Illinois Southeastern Railway Company attempted to consolidate its property and franchise with the Pana, Springfield and Northwestern Railway Company, and that said pretended consolidated company was known and designated by the name of the Springfield, Illinois and Southeastern Railway Company, and that from the time of such pretended consolidation said Illinois and Southeastern Railway Company cease' to exist as a railway company, and ceased to have, hold, or exercise any corporate powers or franchises, and because thereof a vote to the said Illinois and Southeastern Railway Company, taken at a special town meeting on the 20th day of May, A. D. 1870, was illegal, unauthorized, and void; the charter of the Pana, Springfield and Northwestern Railway Company, one of said pretended constituent
13 companies, among other things provides, "That for the purpose of voting for or against such subscription, an election may be held by the legal voters of the town, but no such vote shall be taken unless at a regular election for town and county officers."

Your orators further represent that after the registration of said bonds as aforesaid, in the office of the auditor of state, said bonds by the terms of the registry law, became, were, and still are restricted in their negotiability, and became, were, and still are subject to all the rights and equities existing against said bonds.

Your orators further represent, that after the registration of said bonds the auditor of state, notwithstanding said bonds were issued without warrant and authority of law, wrongfully registered in the office of the auditor of state aforesaid, proceeded from year to year to certify to the county clerk of said county an amount to be levied as a special tax in accordance with the provisions of said registry law for the payment of the interest due on said bonds, and the county clerk from year to year extended the tax aforesaid against the taxable property of said township upon the collector's book of said township, and the same was then and there delivered to the collector of said township under the warrant of the clerk of said county court; and your orators, under color of legal authority, has from year to year been compelled to pay
14 said illegal tax, and that said illegal tax when collected, has been by said collectors paid over to the county treasurer, and the county treasurer has paid the same, or some part thereof over to the State treas-

urer, and said State treasurer is intending, under color of the proce d-ing aforesaid, to pay the same over as interest on the coupons or interest warrants attached to said bonds so illegally and wrongfully issued as aforesaid.

Your orators further represent that there is now in the State and county treasuries as aforesaid moneys belonging to said town or the tax-payers of said town as illegally collected and exacted to be paid on ac-count of said illegal issue of bonds as aforesaid, said tax having been collected off the taxpayers by coercion under color of legal authority as aforesaid, and under the express protest of your orators and the other taxpayers of said town, and your orators and the other taxpayers of said town hereby expressly consent that the court may decree the amount so wrongfully collected as aforesaid and now in the State and county treasuries to be paid over to said township or its legally authorized of-ficers or solicitors.

Your orators further represent that the registration of said bonds in the office of the auditor of said State is a cloud upon the title of the real estate of your orators, your orators and other taxpayers of said town being owners of real estate within the corporate limits of said town,
15 and because thereof the registration of said bonds ought to be annulled, vacated and set aside by the decree of this honorable court, the same being oppressive, inequitable, and unjust.

Your orators further represent that the auditor of state aforesaid is threatening and intending to certify said illegal tax for the year 1878 to the county clerk, and said county clerk is threatening to extend the same upon the tax books of said township, and to deliver the same to the collector of said township, and that said collector is intending and threatening to collect the same off your orators and the other taxpayers of said township, and there is reason to believe, if the registration of said bonds is annulled, that the board of town auditors of said township will attempt to levy a tax with which to pay said principal and interest of said bonds, unless they and each of them are restrain' by an injunc-tion from so doing.

Your orators therefore pray that Edward Rutz, as treasurer of the State of Illinois; Thomas B. Needles, as auditor of the State of Illinois; Richard J. Burns, as clerk of the county court of Clay County, Illinois; Edward H. Hawkins, as treasurer of Clay County, Illinois; John Low-man, as collector of Harter Township, Clay County, Illinois; Rolla B. Henry, as supervisor of said township of Harter, Clay County, Illinois; J. W. Anderson, as clerk of said township of Harter, Clay County, Illinois; and Jesse Lawrence and Jery F. Wilcox, as (two) justices
16 of the peace of said township of Harter, Clay County, Illinois, constituting the corporate authorities of said town, and the un-known owners & holders of said bonds and coupons, and each and every of them by the name, designation and style of " unknown persons," may be made parties defendant to this bill, that process, &c., may issue to bring them into court, and that they and each of them may be com-pelled to answer all and singular the allegations aforesaid upon their respective corporal oaths, as fully as though the same were again set down and they were specially and particularly interrogated thereto, and that pending the hearing of this bill a temporary writ of injunction may be awarded against said defendants, and each and every of them, re-straining them as follows: the said Thomas B. Needles, as auditor of the State of Illinois, from certifying any tax to the county clerk of said county with which to pay said bonds so illegally issued as aforesaid, or any interest upon the same; and that the said county clerk may be re-

strained from expending any tax on the tax books of said township for the purpose of paying any interest on said illegal bonds, or for the purpose of paying the principal or any part thereof; and that the said State and county treasurers and each of them may be restrained from paying over to the bondholders aforesaid, or to the holders of coupons aforesaid, any part of the money that is now in the hands of said treasurers, or that may come into either of said treasurers
17 on account of said illegal tax; and that the collector of said town may be restrained from collecting any tax levied or attempted to be levied with which to pay said bonds or coupons; and that the board of town auditors of said town be restrained from collecting or attempting to collect a tax with which to pay said bonds or coupons or any part therof; and that said owners and holders of said bonds and coupons be restrained from negotiating the same, or by themselves, agents, or solicitors, attempting in any manner to coerce, by suit or otherwise, the collection of said bonds or coupons, and that upon the final hearing of this bill that said injunction may be made perpetual, and said bonds and coupons, by the decree of this honorable court, be annulled, and said defendants, their agents, solicitors, or attorneys, having said bonds or coupons in their possession, be required to bring the same into court so that the same may be annulled under the order and decree of this honorable court, and be required to be given up to be cancelled, and that the State and county treasurers be required to pay over the money, now in said treasuries, so illegally collected, to be applied in payment of said bonds and coupons as aforesaid to said township or its solicitors.

Your orators pray for such other further and different relief as
18 equity and good conscience may require.

SMITH & HOFF, HENRY & DOVE,
Sol's for Comp'ts.

STATE OF ILLINOIS,
Clay County, ss:

makes oath and says heard read the foregoing bill and knows the contents thereof, and that the matters and things therein stated are true within his own personal knowledge, except as to those matters that are stated on information and belief, and with respect thereto he believes the same to be true.

J. M. WILLIAMS.

Sworn and subscribed by J. M. Williams before me this 2d day of Sept., A. D. 1878.

[SEAL.]

G. A. HOFF,
Co. Judge of Clay Co., Ill.

STATE OF ILLINOIS,
Clay County, ss:

makes oath and says that he is one of the complainants in the foregoing bill, and that the rights of complainants will be unduly prejudiced if the injunction is not issued immediately.

19 Affiant further says that the names, post-office address, and place of residence of the owners and holders of the bonds and coupons in the foregoing bill of complaint mentioned are unknown, and that upon diligent inquiry has not been ascertained.

J. M. WILLIAMS.

Subscribed and sworn by J. M. Williams before me this 2d day of , A. D. 1878.

[SEAL.]

G. A. HOFF,
Co. Judge of Clay County, Ills.

STATE OF ILLINOIS,
Clay County, ss:

The undersigned, master in chancery within and for said county, in the absence of the judge of the circuit court of the State of Illinois within and for said county, from said county, do hereby direct the clerk of the circuit court of said county to issue a writ of injunction in accordance with the prayer of said bill upon said complainants' executing bond to said defendants in the sum of dollars, conditioned as required by law, with good and sufficient security, said bond and security to be approved by said clerk.

Master in Chancery.

EXHIBIT A.

A PROPOSITION.

Harter Township.

The following proposition is hereby submitted to the legal voters of the town of Harter, in the county of Clay, in the State of Illinois, by the board of directors of the Illinois Southeastern Railway Company, to be voted upon at an election to be held in said town on the 10th day of November, A. D. 1868.

1st. That the town of Harter, in the county of Clay, and State of Illinois, donate to the Illinois Southeastern Railway Company the sum of $20,000.00 (twenty thousand dollars), to be raised and paid as follows: One third of said amount of twenty thousand dollars to be paid when the said railway company shall grade and tie a railroad through the whole of said township, from north to south, touching the incorporated town of Flora within the limits, as specified by order of the county court, in the said township of Harter, said amount of one-third of said twenty thousand dollars to be raised by a special tax for that purpose levied upon all the taxable property in the said town of Harter and collected in the year 1869 as other taxes, and to be paid to
21 the treasurer of the Illinois Southeastern Railway Company as soon as the same is collected: Provided, the said railroad is graded and timbered ready for the iron as set forth above; if the said railroad is not so graded and tied as aforesaid when the said tax is collected by the treasurer or collector of said county, then said treasurer or collector shall retain the said amount so collected in his hands for the term of two years from the first day of April, A. D. 1869, and if the said railroad is not graded then and tied as above provided, then said amount shall be returned to the said township of Harter, to be disposed of as the town authorities may direct. One-third of the sum of twenty thousand dollars, being the second installment thereof, shall be raised by the said township, in the year of 1870, by the same means above provided for the first one-third and be disposed of in the same way; and in the year 1871 the remaining one-third of said twenty thousand dollars shall be raised in the same way, and both last installments shall then be paid to the treasurer of the said railway company: Provided, that the said railroad shall at the time of the collection of the same amount in 1870 have been fully completed and cars running thereon through said township; and if the said railroad shall not have been completed when the
22 said taxes are collected, the whole amount in the hands of the county treasurer of Clay County, belonging to the said fund, shall

be returned to the supervisors of said town of Harter, to be disposed of as other township funds.

2nd. It is hereby agreed and understood that if the requisite legislation can be obtained from the State legislature at the next session thereof, authorizing and empowering the town of Harter aforesaid to issue township bonds, payable in five years, or a time thereafter, not exceeding twelve years, at the option of the said town of Harter, bearing interest at the rate of ten per cent. *interest* per annum from the date of their delivery to the said railway company, then in that event the said Illinois Southeastern Railway Company shall take and receive the said amount of twenty thousand dollars in the bonds of the said town of Harter, in lieu of the amount to be raised by taxation, as provided for in the first clause of this proposition, and in the case the said tax shall not be levied; but the treasurer of the said railway company shall be compelled to receive said bonds in lieu of and in discharge of said tax. Provided, that the bonds of the said town of Harter shall not be delivered to the said railway company until the railroad of said company shall be com-
23 pleted through said town and the cars be running thereon.

THOS. S. RIDGWAY,
Pres't Board Directors of Ill. S. E. R. W. Co.
C. C. BOGGS,
Sec'y Board Directors of Ill. S. E. R. W. Co.

EXHIBIT B.

Election notice.

Notice is hereby given that on Tuesday, Nov. 10th next, at Flora, E. L. Howell's office, in the county of Clay, an election will be held for accepting or rejecting the above proposition from the Ills. Southeastern Railway Company, which election will be opened at 8 o'clock in the morning and will continue open until 6 o'clock in the afternoon.

Dated at Flora, this 20th of October, in the year of Lord one thou-thousand eight hundred and sixty-eight.

J. M. BILLINGS,
Town Clerk.

EXHIBIT C.

HARTER TOWNSHIP, *Nov. 10th*, 1868.

At a town meeting held at E. L. Howell's office in the town of Flora, in the town of Harter, Clay County, and State of Illinois, on the 10th day of November, 1868, to vote on a donation of twenty thousand dol-
24 lars, to the Southeastern Railway Company, the meeting was called to order by J. M. Billings, town clerk; J. F. Adudell, on motion, was duly chosen moderator, who after being duly sworn by J. M. Billings, town clerk, entered upon the duties of his office; the polls was opened, proclamation first being made at the door by the clerk; votes were then received for or against donation; at 6 o'clock the polls were closed and the moderator proceeded to count the ballots and found the number to be three and forty-two (342), same number that appeared on the poll book kept by the clerk. The following is a statement of the canvass of the ballots cast as publicly canvassed by the moderator at said meeting.

For donation three hundred ballots (300).

Against donation forty-two ballots (42).
After which the meeting adjourned.

I certify this is a correct minutes of the meeting.

J. M. BILLINGS,
Town Clerk.

At a special town meeting held in Flora, Harter Township, Clay County, and State of Illinois, at Dr. W. B. Wilson's office, on the 20th day of May, A. D. 1870.

The meeting was called to order by John McGannon, appointed by L. A. Michels, town clerk, to act in said L. A. Michels stead; W. P. Walker was also chosen as clerk of the election, and William Stanfield moderator, all of whom being duly sworn by L. A. Michels, town clerk, in said town entered upon the duties of their offices.

The polls were then opened for the purpose of voting whether to levy a special tax or issue bonds to pay off the donation made to the Illinois S. E. R. R. Co. by said town at an election held for that purpose; proclamation thereof being first made by the clerk of the meeting at twelve o'clock at noon. On motion of Mr. McGannon the meeting was adjourned and polls closed for one hour, till one o'clock p. m. Meeting was called to order at one o'clock by the moderator, and the polls opened pursuant to adjournment. The polls were kept opened till four o'clock p. m. The result of the election was seventy-nine (79) votes for bonds, and none for special tax. Meeting closed.

JOHN McGANNON,
Clerk P. T.
WILLIAM STANFIELD,
Moderator.

EXHIBIT D.

APRIL 1ST, 1870.

Harter Township bonds were this day to the Springfield and Illinois Southeastern Railway Company, to the amount of twenty thousand dollars ($20,000).

26 MAY 27TH, 1870.

The above bonds were this day properly signed and turned over to Thomas S. Ridgway, president of said railway company, taking his receipt for the same. Three coupons were also cut off, being one hundred and fifty dollars ($150.00) of the interest on said bonds.

L. A. MICHELS,
Town Clerk.

CLAY COUNTY,
Town of Harter:

I do hereby certify that the foregoing (or within) is a true and correct transcript from the original book of records of said town, wherein is contained the entry or record of all such matters.

In witness whereof I have hereunto set my hand and seal this 18th day of June, A. D. 1878.

J. W. ANDERSON,
Town Clerk.

(Endorsed:) Filed in the circuit court this 3d day of August, A. D. 1878. Sam. Enyart, cl'k.

(Also endorsed:) Filed April 17th, A. D. 1880. J. A. Jones, clerk.

27 EXHIBIT B.

Summons.

STATE OF ILLINOIS,
Clay County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon the unknown owner or owners of certain Harter Township bonds issued to the Springfield and Illinois Southeastern Railway Company, impleaded with others, if they shall be found in your county, personally to be and appear in before the circuit court of said county on the first day of the next term thereof, to be holden at the court-house in Louisville, in said Clay County, on the 21st day of October, A. D. 1878, to answer unto Harter Township, James M. Williams, and W. S. Walker in their certain bill of complaint for injunction, &c., filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Samuel Enyart, clerk of our said court, and the seal thereof, at Louisville, this 3d day of September, A. D. 1878.

[L. S.] SAMUEL ENYART, *Clerk*,
By E. J. STANFORD,
Deputy Clerk.

(Endorsed:) I hereby return the within writ not served, the
28 within named not found in my county, this Sept. 9th, 1878, as I am therein commanded.

SILAS HOLLOWELL, *Sheriff.*

(Also endorsed:) Filed in the circuit court this 9th day of Sept., A. D. 1878. Samuel Enyart, clerk.

(Also endorsed:) Filed April 17, 1880. J. A. Jones, clerk.

EXHIBIT C.

Summons.

STATE OF ILLINOIS,
Clay County, ss:

The people of the State of Illinois to the sheriff of Sangamon County, greeting:

We command you that you summon Edward Rutz, treasurer of the State of Illinois, and Thomas B. Needles, auditor of the State of Illinois, impleaded with others, if they shall be found in your county, personally to be and appear in before the circuit court of said county, on the first day of the next term thereof, to be holden at the court-house in Louisville, in said Clay County, on the 21st day of October, A. D. 1878, to answer unto the Township of Harter, James M. Williams, and W. S. Walker in their certain bill of complaint for injunction, &c., filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Samuel Enyhart, clerk of our said court, and the seal
29 thereof, at Louisville, this third day of September, A. D. 1878.

[L. S.] SAMUEL ENYHART, *Clerk*,
By E. J. STANFORD,
Deputy Clerk.

(Endorsed:)

STATE OF ILLINOIS,
Sangamon County, ss:

We, the undersigned, Edward Rutz, as treasurer of the State of Illinois, and Thomas B. Needles, as auditor of the State of Illinois, acknowledge due service of the within process, and hereby enter our appearance in said court to said bill this 24th day of September, A. D. 1878.

T. B. NEEDLES, *A. P. A.*
EDWARD RUTZ, *St. Tr.*

(Also endorsed:) Filed in the circuit court this 30 day of Oct., 1878. Sam. Enyart, cl'k.

(Also endorsed:) Filed April 17th, 1880. J. A. Jones, clerk.

EXHIBIT D.

Summons.

STATE OF ILLINOIS,
Clay County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon J. W. Anderson, clerk of Harter Township, Clay County, Illinois, Jesse W. Lawrence and J. F. Wilcox, justices of the peace in and for the township of Harter and State of Illinois, impleaded with others, if they shall be found in your county, personally to be and appear in before the circuit court of said
30 county on the first day of the next term thereof, to be holden at the court house at Louisville, in said Clay County, on the 21st day of October, A. D. 1878, to answer unto Harter Township, James M. Williams, and W. S. Walker, in their certain bill of complaint for injunction, &c., filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Samuel Enyart, clerk of our said court, and the seal thereof, at Louisville, this 3d day of September, A. D. 1878.

[L. S.] SAMUEL ENYHART, *Clerk*,
By E. J. STANFORD, *Deputy Clerk.*

(Endorsed:)

STATE OF ILLINOIS,
Clay County, ss:

I have duly served the within by reading the same to the within-named J. W. Anderson, J. F. Wilcox, Jessee Lawrence, and at the same time delivering to each of them a true copy thereof, this 21st day of September, 1878.

SILAS HOWELL, *Sheriff.*

(Also endorsed:) Filed Oct. 19, 1878. Sam. Enyart, clerk.

(Also endorsed:) Filed April 17, 1880. J. A. Jones, clerk.

EXHIBIT E.

Summons.

STATE OF ILLINOIS,
Clay County, ss:

31 The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon Richard J. Burns, clerk of the

county court of Clay County, Illinois; Edward H. Hawkins, treasurer of Clay County, Illinois; John Lawrence, collector of Harter Township, Clay County, Illinois; Rolla B. Henry, supervisor of Harter Township, Clay County, Illinois, impleaded with others, if they shall be found in your county, personally to be and appear in before the circuit court of said county, on the first day of the next term thereof, to be holden at the court house in Louisville, in said Clay County, on the 21st day of October, A. D. 1878, to answer unto Harter Township, James W. Williams, and W. S. Walker, in their certain bill of complaint for injunction, &c., filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Samuel Enyart, clerk of our said court, and the seal thereof, at Louisville, this 3d day of September, A. D. 1878.

[L. S.] SAMUEL ENYART, *Clerk*,
By E. J. STANFORD, *Deputy Clerk*.

(Endorsed :)

STATE OF ILLINOIS.
Clay County, ss:

I have duly served the within by reading the same to the
32 within-named Richard J. Burnes, Edward H. Hawkins, Rolla B. Henry, John Lawrence, and at the same time delivering to each of them a true copy thereof, this 21st day of Sept., 1878.

SILAS HOLLOWELL, *Sheriff*.

(Also endorsed :) Filed Oct. 19, 1878. Sam. Enyart, cl'k.

(Endorsed :) Filed April 17, 1880. J. A. Jones, clerk.

EXHIBIT F.

Certificate of publication.

OFFICE OF THE LOUISVILLE LEDGER-DEMOCRAT,
Louisville, Ills., May 1st, 1879.

The undersigned, publisher of the Louisville Ledger-Democrat, a weekly newspaper of general circulation, published in Louisville, Clay County, Illinois, hereby certifies that the annexed advertisement chancery notice was published regularly in said paper for 4 consecutive weeks, the first insertion being on the 4th day of Sept., 1878.

J. T. McCOLLUM,
Publisher Ledger-Democrat,
Per C.

Printer's fee, $12.80.

[Smith & Hoff et al., att'ys.]

Chancery notice.

STATE OF ILLINOIS,
Clay County, ss:

In the circuit court, October term, 1878.

33	THE TOWNSHIP OF HARTER, JAMES M. Williams, and W. S. Walker, *vs.* EDWARD RUTZ, TREASURER OF THE STATE OF Illinois, Thomas B. Needles, auditor of the State of Illinois, Richard J. Burns, clerk of the county court of Clay County, Illinois, Edward H. Hawkins, treasurer of Clay County, Illinois, John Lawrence, collector of Harter Township, Clay County, Illinois, Rolla B. Henry, supervisor of Harter Township, Clay County, Illinois, et al.	In chancery. Bill for injunction.

Affidavit of the non-residence of the unknown owner or owners of certain Harter Township bonds, issued to the Springfield & Illinois Southeastern Railway Company, impleaded with the above defendants, having been filed in the clerk's office of the circuit court of said county, notice is therefore hereby given to the said non-resident defendants that the complainants filed their bill of complaint in said court, on the chancery side thereof, on the 3d day of September, 1878, and that thereupon a summons issued out of said court wherein said suit is now pending, returnable on the third Monday in the month of October next, as is by law required:

Now, unless you, the said non-resident defendants above-named, the unknown owner or owners of certain Harter Township bonds issued to the Springfield & Illinois Southeastern Railway Company, shall personally be and appear before said circuit court on the first day of the next term thereof, to be holden at Louisville, in and for the said county,
34 on the third Monday in October next, and plead, answer or demur to the said complainants' bill of complaint, the same and the matters and things therein charged and stated will be taken as confessed, and a decree entered against you according to the prayer of said bill.

SAMUEL ENYART, *Clk.*

LOUISVILLE, ILL., *Sept.* 3, 1878.

(Endorsed:) Filed May 1, 1879. Sam. Enyart, clerk.

(Also endorsed:) Filed April 17, 1880. J. A. Jones, clerk.

G.

Motion to redocket the case & open the decree.

HARTER TOWNSHIP, JAMES M. WILLIAMS, AND W. S. Walker
vs.
EDWARD RUTZ ET AL.

At the March term circuit court, A. D. 1880.

And now comes John A Kernochan through his attorney, Geo. A.

Sanders, & moves the court that the above-entitled cause be placed upon the docket and the decree be opened as in such cases made and provided by the statute.

GEO. A. SANDERS,
Att'y for John A. Kernochan.

(Endorsed:) Filed March 17th, 1880. S. Enyart, clerk.

(Also endorsed:) Filed April 17, 1880. J. A. Jones, cl'k.

35 H.

Petition of Kernochan.

In the circuit court Clay County, to the March term, A. D. 1880. In chancery.

HARTER TOWNSHIP, JAMES M. WILLIAMS, AND W. S. Walker
vs.
EDWARD RUTZ ET AL.

To the judge of the circuit court of Clay County, Illinois, in chancery sitting:

The petitioner, John A. Kernochan, of Berkshire County, State of Massachusetts, respectfully represents unto your honor that on or about the 3d day of September, A. D. 1878, the above-named complainants, Harter Township, in Clay County, Illinois, James M. Williams, and W. S. Walker, exhibited their bill of complaint against Edward Rutz, treasurer of the State of Illinois; Thomas B. Needles, auditor of the State of Illinois; Richard J. Burns, clerk of the county court of Clay County; Edward H. Hawkins, treasurer of Clay County, Illinois; John Lawrence, collector of said Harter Township; Rolla B. Henry, supervisor of said township; J. W. Anderson, clerk of said township, Jesse
36 Lawrence and Jerry Wilcox, justices, &c., and the unknown persons holders and owners of bonds and coupons issued by said township to the Springfield and Illinois Southeastern Railway Company, in this honorable court in this suit, in which complainants aver that publication was made to notify said unknown persons, of whom your petitioner was and is one, of the commencement and pendency of said suit; and that on or about the 2nd day of May, A. D. 1879, being one of the days of the April term, A. D. 1879, of said court, a pro confesso decree in said suit was rendered against said defendants and your petitioner, as an unknown person, defendant to said bill, as by the records and proceedings of *of* this honorable court will more fully and at large appear.

And your petitioner further represents unto your honor that he has not been summoned or served with a copy of the said bill of complaint or received notice of the pending of said suit, required by the statute to be sent him by mail by the clerk of this court, and has received no notice in writing of such decree, save through a private letter from his att'y informing him that such decree had been made, &c.

Your petitioner therefore appears in this honorable court and asks to be heard touching the matters of such suit and decree, upon such reasonable terms as to the court may seem just, in pursuance of the statute in such case made and provided, and prays that upon a further hear-
37 ing of this cause the court will order that said decree be set aside,

altered, or amended, as to this court will seem just and equitable, and that your petitioner may have such other relief in the premises as to equity shall appertain.

JOHN A. KERNOCHAN.

STATE OF NEW YORK,
County of , ss:

On this the 11th day of March, A. D. 1880, before me personally appeared John A. Kernochan and made oath that he has read the above petition subscribed by him and knows the contents thereof, and the same is true of his own knowledge except as to matters which are therein stated to be on his information and belief, and as to those things he believes them to be true.

JOHN A. KERNOCHAN.

Subscribed in my presence and sworn to before me this 11th day of March, 1880, as witness my hand and official seal.

COMMISSIONER FOR THE STATE OF ILLINOIS. SEAL.

CHARLES EDGAR MILLS. [N. P. SEAL.]
A Commissioner for the State of Illinois in New York & a Notary Public for N. Y. Co.

(Endorsed:) Filed March 17, 1880. Sam. Enyart, cl'k.

(Also endorsed:) Filed April 17th, 1880. J. A. Jones, clerk.

38 EXHIBIT I.

Petition of Kernochan & bond.

Petition.

Petition for removal on the ground of citizenship, under the act of March 3d, 1875, where the adversary parties are all citizens of different States, and all the plaintiffs or all the defendants unite in the petition for removal.

In the circuit court of Clay County, State of Illinois.

THE TOWNSHIP OF HARTER, IN CLAY COUNTY, Illinois, James M. Williams, and W. S. Walker, plaintiffs,
vs.
EDWARD RUTZ ET AL., DEFENDANTS.

Petition for removal to the circuit court of the United States, district of Southern Illinois.

To the honorable the circuit court of Clay County, State of Illinois:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commence-
39 ment of this suit, and still is, a citizen of the State of Massachusetts, and that The Township of Harter, Clay Co., Illinois, James M. Williams, and W. S. Walker, were then and still are citizens of the State of Illinois, and that the petitioner was then and still is the owner of the twenty thousand dollars of bonds of Harter Township, Clay Co.,

Illinois, in controversy in the above-entitled suit, purchased by the petitioner for a good and valuable consideration.

And your petitioner offers herewith a good and sufficient surety for his entering in said circuit court of the United States, on the first day of its next session, a copy of the records in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the southern district of Illinois; and he will ever pray.

Attorney for Petitioner.

STATE OF NEW YORK,
City & County of New York, ss:

I, John A. Kernochan, being duly sworn, do say that I am the petitioner herein in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the
40 statements and allegations therein contained are true, as I verily believe.

JOHN A. KERNOCHAN.

Subscribed by the said John A. Kernochan in my presence, by and by him sworn to before me this 11th day of March, 1880.

{ COMMISSIONER FOR THE STATE OF ILLINOIS. SEAL. }

CHARLES EDGAR MILLS,
[NOTARY PUBLIC SEAL.]
Commissioner for Illinois, &c., Notary Public for N. Y. Co., in N. Y.

Bond.

Bond for the removal of a cause under the act of March 3rd, 1875.

Know all men by these presents that I, John A. Kernochan, of Pittsfield, Massachusetts, as principal, and Frank W. Tracy, of Springfield, county of Sangamon and State of Illinois, held and firmly bound unto The Township of Harter, Clay Co., Illinois, J. M. Williams, and W. S. Walker, complainants in bill in suit vs. Edward Rutz et al., in the penal sum of five hundred dollars, for the payment whereof, well and truly to be made unto the said Township of Harter, Clay County, Illinois, Jas. M. Williams, and W. S. Walker, their heirs, representatives, and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

41 Yet upon these conditions: The said John A. Kernochan having petitioned the circuit court of Clay County, State of Illinois, for the removal of a certain cause therein pending wherein The Township of Harter, Clay Co., Ills., Jos. M. Williams, and W. S. Walker are plaintiffs and Edward Rutz et al. defendants, to the circuit court of the United States in and for the district of Southern Illinois:

Now, if the said John A. Kernochan, your petitioner, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if

said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 11th day of March, A. D. 1880.

JOHN A. KERNOCHAN. [L. S.]
FRANK W. TRACY. [L. S.]

STATE OF ILLINOIS,
County of Sangamon, ss:

I, Frank W. Tracy, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Illinois and a property holder therein; that I am worth
42 the sum of five hundred dollars over and above all my debts and liabilities, and exclusive of property by law exempt from execution; that I have property in the State of Illinois, liable to execution, of the value of more than five hundred dollars.

FRANK W. TRACY.

Subscribed in my presence by Frank W. Tracy and by him sworn to before me this 16 day of March, A. D. 1880.

[N. P. SEAL.] JAS. F. McNEILL,
Notary Public.

NOTE.—If special bail was originally requisite in said cause, then add "and shall then and there appear and enter special bail in said suit." It is advisable that the sureties justify, but it is not absolutely necessary.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 11th day of March, A. D. 1880, before me, Charles Edgar Mills, a notary public of the State of New York, in and for the county of New York, duly commissioned and sworn and dwelling in said city of New York, personally came John A. Kernochan, to me personally known to be the same person described in and who executed the foregoing instrument, who signed and sealed the same in my presence and acknowledged to me that he executed the same, as his free act and deed for the uses and purposes therein mentioned.
43 In witness whereof I have hereunto set my hand and affixed my official seal this 11th day of March, A. D. 1880.

[N. P. SEAL.] CHARLES EDGAR MILLS,
Notary Public for New York,
State of New York, 117 Broadway, N. Y. City.

(Endorsed:) Filed March 17th, 1880. Sam'l Enyart, clerk.

(Also endorsed:) Filed April 17th, 1880. J. A. Jones, clerk.

EXHIBIT J.

STATE OF ILLINOIS,
Clay County, ss :

In the circuit court, Oct. term, A. D. 1878.

IN THE MATTER OF HARTER TOWNSHIP ET AL.
vs.
EDWARD RUTZ ET AL. } Injunction.

Plaintiff's costs.

Clerk's fees.	Fee for each item.	Oct. Term A. D. 1878.		April Term A. D. 1879.		March Term A. D. 1880.		Total amount.
		No.	Amount.	No.	Amount.	No.	Amount.	
Docketing suit each time	20		20		20		20	
Filing papers in suit	05				5		15	
Appearance of party or attorney	15		15		15		15	
Issuing & filing summons	40		1 60					
Taking bond							20	
Motion and order for continuance	40		40					
Iss'g notice for pub. per 100 words	15				45			
Ent. and filing proof pub	25				25			
Motion and order to call defendant	40				40			
" Entering default	20				20			
Recording decree per 100 words	15				5 00			
Cert. and seal to same	30				30			
Order for costs	20				20			
Order for execution	20				20			
Motions not enumerated	20		20		20		40	
Orders not enumerated	20		20		20		40	
Indexing suit in court	15		15		15		15	
Satisfaction of fee bill	05		5		5		5	
Making and entering fee bill	30		30		30		30	
Total plaintiff's for each term			3 30		8 25		2 60	$13 55
Sheriff's fees serving summons: Summons, 7.00; return, .40; miles, 3.50								10 90
Printer's " J. T. McCollum								12 80
Accruing costs—transcript of proceedings								6 00
Total fees								$43 25

I hereby certify that the foregoing is a true copy of the defendant's costs herein.
Given under my hand and seal of court.

SAMUEL ENYART, *Clerk.*

(Endorsed :) Filed April 17th, 1880. J. A. Jones, clerk.

Transcript of orders in the State court.

UNITED STATES OF AMERICA :

STATE OF ILLINOIS,
Clay County, ss :

In circuit court, October term, A. D. 1878.

Pleas before the honorable John H. Halley, judge of the 2nd judi-
45 cial circuit of the State of Illinois, and sole presiding judge of the

circuit court of Clay County, in the State aforesaid, and at a term thereof begun and held at the court house in the town of Louisville, in said county, on the twenty first day (being the third Monday) of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

Present, honorable John H. Halley, judge of the second judicial circuit of the State of Illinois, James A. Finch, State's attorney, Silas Hollowell, sheriff.

Attest:

SAMUEL ENYART, *Clerk.*

Be it remembered that on, to wit, the fourth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, it being the thirteenth regular day of said term of said court, proceedings were had and entered of record in the words and figures following, viz:

TOWN OF HARTER ET AL.
vs.
EDWARD RUTZ ET AL. } Injunction.

And now on this the 13th day of this term leave is given the defendants herein to file answer to plaintiffs' bill within four months, and this cause is continued therefor.

46 Be it remembered again that on, to wit, the first day of May, in the year of our Lord one thousand eight hundred and seventy-nine, it being the fourth regular day of the April term, A. D. 1879, of said court, proceedings were had and entered of record in the words and figures following, viz:

Decree.

STATE OF ILLINOIS,
Clay County, ss:

Clay circuit court.—April term, A. D. 1879.

TOWN OF HARTER, JAMES M. WILLIAMS & W. S. Walker,
vs.
EDWARD RUTZ AS TREASURER OF THE STATE of Illinois, Thomas B. Needles as auditor of the State of Illinois, Richard J. Burns, as clerk of the county court of Clay Co., Illinois, Edward H. Hawkins, as treasurer of said county, John Lawrence, as collector of Harter Township, Illinois, Rolla B. Henry, as supervisor of Harter Township, Clay Co., Illinois, et al.

And now comes the cause on to be heard on to wit, this the first day of May, A. D. 1879, upon the bill and exhibits attached to said bill, and it appearing to the court that all of said defendants were duly served with process, notified of the pendency of said suit by publication
47 or entered their appearence to said bill and were amenable to the jurisdiction of said court, and it further appearing to the court

that said court had jurisdiction of the subject matter, and the person of said defendants, and said defendants being so amenable to the jurisdiction of said court were said court ruled to answer said bill and failed to comply with said rule, it was therefore ordered by the court that a decree pro confesso be entered by said court against said defendants and each of them, and that the allegations in said bill be taken as true, it further appearing to the court that all of the tax payers in the township of Harter aforesaid claim the benefits of said bill, and that on the 10th day of November, A. D. 1868, the Illinois Southeastern Railway Company filed a proposition to the inhabitants of said town with the county clerk of the county of Clay aforesaid, and also with the clerk of said town under section ten (10) of an act of the legislature, entitled an act to incorporate the Illinois Southeastern Railway Company, by which proposition said town was requested to hold a town meeting on the 10th day of November, A. D. 1878, for the purpose of determining whether the town of Harter should donate to said railway company the sum of twenty thousand dollars, to be raised and paid to said company in the following terms and conditions: One-third of said twenty thousand dollars when said railway company should have graded and tied the railroad through the whole of said township from north to south
48 touching the incorporated town of Flora, one-third of twenty thousand dollars to be raised by special tax upon the town of Harter, and collected in the year 1869, to be paid to the treasurer of said railway company, provided that said railroad should be graded and timbered ready for the iron; one-third of said twenty thousand dollars to be raised by said township in the year 1870, and one-third to be raised as provided in the year A. D. 1871, and paid to the treasurer of said railway company in the manner aforesaid, provided that said railroad should be completed in 1871, and cars running thereon through said township, it further appearing to said court that the clerk of said township gave notice that an election should be held on the 10th day of November, A. D. 1868, at E. S. Howell's office in the county of Clay, and that in pursuance of said notice on the 10th day of November, A. D. 1868, and election was held, and there was cast at said election for donation three hundred ballots, against donation forty two ballots; that afterwards on the 20th day of May, 1870, a certain other town meeting was held in Flora, in the township of Harter, at the office of Dr. B. Wilson, which meeting was organized by the election of William Stanfield as moderator, and L. A. Michaels town clerk, the polls were opened for the purpose of voting on the question as to whether a special tax should be levied to pay off the donation made to the Illinois Southeastern Railway Company, or whether said town should issue
49 bonds to pay off said donation, which election resulted in seventy-nine ballots being cast for bonds and none for special tax; and it further appearing to the court from said bill and exhibits that on the first day of April, A. D. 1870, an order was made reciting that Harter township bonds were this day issued to the Springfield and Illinois Southeastern Railway Company to the amount of twenty thousand dollars, and that on May 27th, 1870, it is recited in said minutes that the above bonds were this day issued and turned over to Thomas S. Ridgway, president of said railway company, taking his receipt for the same; it further appearing to the court that said record and proceedings was wholly insufficient to authorize said town to issue said bonds, that said town meetings and each of them were held and conducted without warrant or authority of law, and that because thereof the issuing of said town bonds to the Springfield and Illinois Southeastern

Railway Company was illegal, unauthorized and void; it further appearing to the court from the bill, exhibit, and charter of the Illinois Southeastern Railway Company that said town had no authority to issue said bonds in payment of a donation, neither was said town, by the written proposition made by said Illinois Southeastern Railway Company authorized to issue bonds and donate the same to said railway company; it further appearing to said court from said bill and
50 exhibit that the supervisor and town clerk, without warrant or authority of law, on the first day of April, A. D. 1870, issued to the Illinois Southeastern Railway Company twenty bonds of the denomination and calling for one thousand dollars each, which said bonds bear interest at the rate of ten percentum per annum, interest payable on the first day of October and April in each and every year, and that said bonds were, on the 31st day of May, A. D. 1870, registered in the office of the State of Illinois, and after being so registered said bonds were negotiated, and are now held by divers and sundry persons whose names were and are unknown to complainants; it further appearing to the court from the bill and exhibit that said bonds were issued by the supervisor and town clerk without corporate action and without authority or concurrence of the board of town auditors, and without the question of the issuing of said bonds having been first submitted to the legal voters of said town, in accordance with the provisions of the charter of said railway company, and that the only election that was held was the elections aforesaid, and that said elections were illegal, unauthorized, and void, and that at the time of holding said pretended elections there were more than three hundred legal voters living in the township of Harter that were legally entitled to vote at said election, and that at said pretended election or special town meeting there was only cast
51 seventy-nine (79) votes in favor of issuing bonds in payment of said donation, and because thereof and the illegalities aforesaid said bonds are void and not entitled to registration, under an act to fund and provide for paying railroad debts, &c., approved April 16th, A. D. 1869, and that the auditor, by virtue of said pretended registration, had and has no authority to certify a special tax to the clerk of the county court of said county; it further appearing to the court from said bill and exhibits that the supervisor and clerk of said township issued said bonds without warrant or authority of law to the Springfield, Illinois, Southeastern Railway Company, a corporation other and different from the corporation aforesaid, which said pretended donation was, by the election aforesaid, authorized to be made, and that the Springfield, Illinois, Southeastern Railway Company had no right or authority to receive said bonds, said bonds being issued by said supervisor and town clerk to said railway company last aforesaid without warrant or authority of law, and that said town is not legally or equitably bound to pay the same, and that no tax can be legally levied by the auditor of state, or by the corporate authorities of said town, with which to pay said bonds, and because thereof said bonds are void; and it further appearing to said court that after the registration of said bonds as aforesaid said bonds became and still are re'tricted in their negotiability, and because thereof are subject to all the rights and equities existing
52 against them; and it further appearing to the court that notwithstanding said bonds were issued without warrant and authority of law, and were wrongfully registered in the office of the auditor of state aforesaid, still said auditor proceeded from year to year to certify to the county clerk an amount to be levied as a special tax in accordance with the provisions of said registry law for the payment of

the interest purporting to fall due on said bonds, and that the clerk from year to year extended the tax aforesaid against the taxable property of said town upon the collector's books, and that the collector, under the warrant of the clerk of said county court and under color of legal authority, has been compelling the tax-payers to pay said illegal tax to said collector, and that said collector has paid the same over to the county treasurer, and the county treasurer has paid a part thereof over to the State treasurer, and that said State treasurer is intending to pay the same over as interest on said bonds, and that the State and county treasurer aforesaid have money belonging to said town or the tax payers of said town so illegally collected, and exacted to be paid on account of said illegal issue of said bonds, said tax having been collected of the tax-payers by coercion under color of legal authority, and under the express protest of said tax-payers, and that said tax-payers have consented that the court may decree the amount so wrongfully collected and now in the State and county treasurer's to be
53 paid to said township, or its legally authorized officers or solicitors. And it further appearing to the court that the registration of said bonds as a cloud upon the title of the tax-payers of said town being owners of real estate within the corporate limits of said town, and because thereof the registration of said bonds ought to be annulled, vacated, and set aside. And it further appearing to the court that the auditor is threatening to certify said illegal tax, and have the same extended upon the books of said township, and it further appearing to the court that all of the allegations of said bill and exhibits are true, it is therefore ordered, adjudged, and decreed by the court that all of the allegations of said bill are true, and that the complainants and the other tax-payers of said town are entitled to be relieved in the premises. It is further ordered, adjudged, and decreed by the court that the pretended elections authorizing the issuing of said bonds be, and the same are hereby, declared to have been illegal, without warrant or authority of law, and therefore void, and that the bonds and coupons issued by the supervisor and town clerk of said town to the Illinois Southeastern Railway Company, and delivered to the Springfield, Illinois, and Southeastern Railway Company, be, and the same is, hereby declared to be null and void, to be issued without warrant or authority of law.

It is further ordered, adjudged, and decreed by the court that
54 the actions and doings of the auditor of the State of Illinois, in the levying or directing the levy of a tax with which to pay the interest on said bonds, and said bonds and the registration of said bonds be and the same is hereby declared to be illegal, unauthorized, and to have been done and performed without warrant or authority of law, and that the registration of said bonds, because of the premises aforesaid, is hereby annulled, vacated, and set aside, and the same declared to be illegal.

It is further ordered, adjudged, and decreed by the court that the money in the hands or under the control of the State and county treasuries be and the same is hereby directed to be paid over to the supervisor of said town, or to Gersham A. Hoff, and W. J. Henry as solicitors for said complainants and said tax-payers, and that the money in the hands or under the control of the treasurer of said State, that the auditor aforesaid shall draw a warrant upon said treasurer for the amount so illegally in the hands of said treasurer, and that a certified copy of this decree shall be a sufficient warrant or authority for so doing. It is further ordered, adjudged, and decreed by the court that said defendants, and each and every of them, be and are hereby perpetually enjoined

from negotiating, selling, transferring, or otherwise putting in use said bonds, or the interest warrants or coupons attached to said bonds, or from in any manner collecting, or attempting to collect, the same.

55 It is further ordered, adjudged, and decreed by the court that said defendants, and each and every of them, be perpetually enjoined from collecting or attempting to collect, or in any manner enforcing, or attempting to enforce, the collection of the tax with which to pay said bonds or the interest thereon, or from doing or suffering any act to be done which would in any manner recognize the legal liability of said town upon said bonds.

It is further ordered by the court that said defendants, in case of an attempt to violate the provisions of this decree, are hereby adjudged to be in contempt of this decree, and liable to be punishd by fine and imprisonment for such violation or attempted violation. It is further ordered that complainants pay the cost of this proceeding, and that this decree be final.

Approved.

J. C. ALLEN, *Judge.*

(Endorsed:) Filed May 2nd, 1879. Sam'l Enyart, clerk.

Be it remembered again that on, to wit, the seventeenth day of March, in the year of our Lord one thousand eight hundred and eighty, it being the third regular day of the March term, A. D. 1880, of said court, proceedings were had and entered of record in the words and figures following, viz:

56 *Order for removal.*

TOWN OF HARTER, JAMES M. WILLIAMS, W. S. Walker
vs.
EDWARD RUTZ ET AL. } Injunction.

And now, on this the third day of the term, came the defendants, by Geo. A. Sanders, and presents the petition of John A. Kernochan, and moves the court to redocket this cause and open the decree herein; and the court, being advised in the matter, orders that the prayer of the petitioner be granted.

And now again comes the said defendants, by the said George A. Sanders, and presents the petition of John A. Kernochan to remove this cause to the Federal Court, and also files his bond herein, which by the court is approved.

And it is ordered by the court that this cause be certified to said Federal Court, and that the clerk of this court transmit all papers belonging to this cause to said Federal Court.

I, Samuel Enyart, clerk of the circuit court of Clay County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all the records and proceedings had in a certain cause pending in said court, on the chancery side thereof, wherein Harter Township, James M. Williams, et al., are plaintiffs, and Edward Rutz et al. are defendants, and that the papers herewith transmitted and marked respectively Exhibits A, B, C, D, E, F, G, H,

57 I, & J, are all the papers in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Louisville this fifteenth day of April, A. D. 1880.
[L. S.] SAMUEL ENYHART, *Clerk.*

(Endorsed:) Filed April 17th, A. D. 1880. J. A. Jones, clerk.

And afterwards, to wit, on the 8th day of June, in the year aforesaid, came said complainants, The Town of Harter et al., and filed in said clerk's office their motion to remand in said cause, which is in the words and figures following, to wit:

Motion to remand.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the circuit court. June term, A. D. 1880.

THOMAS B. NEEDLES, AUDITOR, &C., ET AL.
atvs.
THE TOWN OF HARTER ET AL. } Motion to remand.

Now comes the town of Harter et al. and moves the court to remand said cause from the circuit court of the United States within and for said district to the circuit court of the State of Illinois within and for Clay County, for the following reasons:

1st. That said circuit court of the United States has no jurisdiction of said cause.

2nd. That the petition, &c., for the removal of said cause was not filed in the State court at the first term thereof, at which said cause could have been tried.

3d. That the petition and bond for the removal of said cause
58 were not filed in said State court until after a decree had been entered in said cause.

4th. That there is no controversy existing between the petitioner for the removal of said cause and said complainants.

5th. That the controversy, if any, is not wholly between citizens of different States, nor between the complainants and the parties seeking to remove said cause.

6th. That the party petitioning for the removal of said cause had not filed certified copies of the record and proceedings in said cause, on the first day of the term of this court, as required by the act of Congress of March 3rd, 1875.

Complainants therefore move the court to remand said cause.

W. J. HENRY,
For Comp'ts.

(Endorsed:) Filed June 8, 1880. J. A. Jones, clerk.

And afterwards, to wit, on the 24th day of June, in the year aforesaid, came the defendant, John A. Kernochan, by his att'y, and filed in the office of the clerk of said court his answer in said cause, which is in the words and figures following, to wit

Answer of John A. Kernochan.

In the circuit court of Clay County. To the March term, A. D. 1880.

HARTER TOWNSHIP, &C., JOHN M. WILLIAMS, and W. S. Walker
vs.
EDWARD RUTZ ET AL.
} In chancery.

59 The answer of John A. Kernochan, one of the defendants to the bill of complaint of Harter Township, James M. Williams, and W. S. Walker.

The several answer' of John A. Kernochan, one of the unknown defendants to the bill of complaint of Harter Township, in the county of Clay and State of Illinois, and James M. Williams and W. S. Walker, complainants.

This defendant, saving and reserving, etc., for answer to said bill of complaint, or to so much thereof as he is advised it is material or necessary for him to answer unto, answering, says: That he believes it to be true as alleged in and by said bill the Illinois Southeastern Railway Company, a body corporate under and by virtue of legislative enactments of the State of Illinois, being about to construct a railway to and through the township of Harter, county of Clay and State of Illinois, on or about the day of , A. D. 1868, submitted a proposition, as alleged in said bill, to said town of Harter, requesting the proper authorities thereof to hold a meeting or election for the purpose of determining whether said town should donate to said railway company the sum of twenty thousand dollars, which said proposition was in writing and defendant believes that Exhibit A of complainant's bill is a true copy thereof.

And this defendant, further answering, says he believes it to be true as alleged and set forth in said bill that an election was called and held in and by said town or the electors thereof in pursuance of said legis-
60 lative enactment to determine whether they would accept or reject said proposition, and that at said election the said proposition was carried by a large majority; and said town authorities thereupon determined to and did make said donation to be paid at the time and in the sums and manner set forth in and by said proposition; but whether Exhibit B of complainants' bill is a true and correct copy of the notice and call for said election, or Exhibit C of bill is a copy of the minutes of said meeting, this defendant does not know and cannot state.

And this defendant, further answering, says that so far as he knows and believes the proceedings of said town, of, through, and by which it determined to make said donation, were strictly in accordance with the legislative enactment by which said railway company was chartered and donations thereto authorized and provided for. And for greater certainty respecting said enactment and the provisions thereof this defendant refers to the same as found on page 750, 751, 752, 753, & 754 & 755, volume 2 of the private laws of the State of Illinois for the year 1867, and asks that the same may be taken and treated as part of this his answer.

And this defendant, further answering, says that the said railroad was constructed to and through said town of Harter from north to

south, touching and cutting the corporation of Flora, in said Clay County, and that thereupon the said railway company became and was entitled to said donation.

61 And this defendant, further answering, says that before any tax was levied by said town of Harter with which to make payment upon and toward said donation, the legislative enactment aforesaid was amended by the legislature of said State by an act approved February 24th, 1869, entitled "An act to amend an act entitled an act to incorporate the Illinois Southeastern Railway Company," in and by which amendatory act it was provided among other things in substance that certain townships in said Clay County which had theretofore voted donations to said railway company might issue bonds for the same without again submitting the matter to a vote. And for greater certainty respecting the provisions of said amendatory act, this defendant refers to the same as found in volume 3 of the private laws of the State of Illinois for the year 1869, pages 308, 309, 310, 311, 312, 313, 314, 315, and asks that the same may be taken and treated as a part of this his answer.

And this defendant, further answering, says that he is informed and believes, and so charges the fact to be, that the said town of Harter did strictly, in pursuance of the provisions of said amendatory act elect and determine to issue bonds for and in satisfaction of said donation, of the denomination of $1,000 each, at ten per cent. interest, due and payable in twenty years, and that in pursuance of such election and determination, the said town did, after duly making and executing said bonds, to wit, on or about the 27th day of May, A. D. 1870, issue and deliver said bonds to the amount of $20,000 to the president of said railway

62 company, cutting off interest coupons from said bonds to the amount of $150, to cancel the interest accrued on said bonds from April 1st, 1870, the date thereof, till the 27th day of May, 1870, the date and time when said bonds were made and issued, as aforesaid; but whether Exhibit D of complainant's bill is a true and correct copy of the minutes of any town meeting under said amendatory act, this defendant does not know, and cannot state.

And this defendant, further answering, says that on or about the 15th day of December, A. D. 1870, he purchased all of said bonds for a valuable consideration, in good faith, and without any notice or knowledge whatever that there were any irregularities or violations of law by the said town in the making and issuing thereof, and has ever since held, possessed, and owned the same, collecting and receiving the interest thereon until April 1st, 1879, when said town ceased to pay interest thereon, a copy of one of which said bonds, they all being of like tenor and effect, save as to consecutive numbers of bonds, is herewith filed as Exhibit A of this answer, and which this defendant asks may be taken and considered as a part of this his answer.

And this defendant, further answering, says that he is informed and believes, and so charges the fact to be, that said bonds, though dated April 1st, 1870, were not, in fact, made and issued by said town till the 27th day of May, 1870, when they were delivered, as aforesaid, to the president of said railway company, and this defendant here de-

63 nies that the supervisor and town clerk of said town of Harter issued without warrant or authority of law, on the 1st day of April, A. D. 1870, the said bonds aforesaid to said railway co.; but this defendant here charges the fact to be that said bonds were issued under and in pursuance of the provisions of the aforesaid legislative enactments, on the 27th day of May, A. D. 1870.

And this defendant, further answering, says it is true, as alleged in and by said bill, that said bonds were registered on or about the 31st day of May, 1870, in pursuance of law, in the office of the auditor of public accounts of the State of Illinois; and this defendant, as part of his answer, herewith files, marked Exhibit B, a copy of the certificate made by the supervisor of said town of Harter, in pursuance of law, upon which the said bonds were entitled to, and were registered, as aforesaid, in the office of said auditor, in pursuance of the provisions of the statute in regard to such registration.

And this defendant, further answering, says he is informed and believes that the said bonds were made and issued to the Illinois Southeastern Railway Company, and not to the Springfield, Illinois, and Southeastern Railway Company, as alleged in said bill; and if said bonds were not in fact so issued and delivered to said Illinois Southeastern Railway Company, this defendant charges the fact to be that they were properly and legally issued and delivered by said town to the party duly authorized under the law to receive the same.

64 And this defendant, further answering, says that he does not know whether twenty-five or any number of residents of said town of Harter did by petition request a special meeting of said town, to consider the question as to whether the said town would levy a special tax or issue *or issue* bonds to pay said donation; but this defendant charges the fact to be that no petition by any number of signers was in law required to be presented to the town authorities to enable them to call and hold such special town meeting; and defendant denies that the proceedings of said town respecting and touching the issue of said bonds are all set out and referred to in and by said bill; and he here states that he is informed and believes that said town of Harter, in all its proceedings and acts about the making of said donation, and the making and issue of said bonds, duly observed and properly carried out all provisions of said legislative enactments respecting such donation and issue of bonds.

And this defendant, further answering, says that he does not know how many legal voters, entitled under the law to vote at said town meeting, convened to determine whether said bonds should be issued or not, were in said town at the time of said special meeting; but he charges the fact to be that the proposition to issue the bonds was unanimously carried and passed at said meeting by a lawful quorum of the residents and electors of said town of Harter.

65 And this defendant, further answering, denies that the complainants are entitled to the relief, or any part thereof, in the said bill of complaint demanded by complainants, and prays the same advantage from this answer as if he had pleaded or demurred to the said bill of complaint.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as the honorable court shall direct; and he prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

JOHN A. KERNOCHAN.

GEORGE A. SANDERS,
Solicitor for Defendant.

STATE OF NEW YORK,
City & County of New York, ss:

On this the 11th day of March, A. D. 1880, before me personally appeared John A. Kernochan and made oath that he has read the above-

answered, subscribed by him, and knows the contents thereof, and the same is true, of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those things he believes them to be true.

JOHN A. KERNOCHAN.

Subscribed in my presence and sworn to before me this 11th day of March, 1880, as witness my hand and official seal.

CHARLES EDGAR MILLS, [N. P.]
A Commissioner of the State of Illinois in New York, &
A Notary Public for N. Y. Co.

[A COMMISSIONER FOR THE STATE OF ILLINOIS. SEAL.]

66 EXHIBIT A.

[Registered by Auditor of Public Accounts. Principal and interest collected and paid by the Treasurer of State of Illinois.]

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, HARTER.

No. 1.] *Township Railroad Bond.* [$1,000.

Know all men by these presents that the township of Harter, in the county of Clay and State of Illinois, acknowledges itself to owe and be indebted to the Illinois Southeastern Railway Company, or bearer, in the sum of one thousand dollars, which sum the said township promises to pay, at the office of the treasurer of the county aforesaid, on the first day of April, A. D. 1890, the said township reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of ten per centum per annum, payable semi-annually, on the first day of April and October of each year, on the presentation and surrender of the annexed coupons.

This bond is one of a series of bonds issued by said township to aid in the construction of the Illinois Southeastern Railway, in *in* pursuance of the authority conferred by an act of the general assembly of the State of Illinois, entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 25th, 1867, and "An act amendatory thereof, approved February 24th, 1869," and an election of the legal voters of the aforesaid township, held on the 10th day of November, 1868, under the provisions of said act.

67 In witness whereof the said township of Harter has caused these presents to be signed by its supervisor and countersigned by its clerk this first day of April, 1870.

C. K. HENDEE, *Supervisor.*

L. A. MICHELS, *Clerk.*

(Across the face in red:) $1,000.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, May 13, 1870.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office this day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

HARTER TOWNSHIP, CLAY COUNTY, ILLINOIS.

$1,000.] *Bond.* [10 per cent.

Principal payable April 1st, 1890.
Interest payable April 1st and October 1st.

The Springfield and Illinois Southeastern Railway Company of the State of Illinois hereby guarantees the payment of the principal
68 and interest of this bond at the American Exchange National Bank, in the city of New York, by virtue of a resolution of said company passed on the 13th day of April, A. D. 1870.

As witness the corporate signature and seal of said company, hereto affixed by Thomas S. Ridgway, its president, this 21st day of April, A. D. 1870.

THE SPRINGFIELD AND ILLINOIS SOUTHEASTERN RAILWAY COMPANY,
By THOS. S. RIDGWAY,
President.

[SPRINGFIELD AND ILLINOIS S. E. RAILWAY CO. L. S.]

Township of Harter, county of Clay, State of Illinois, will pay to the bearer fifty dollars, at the office of the treasurer of Clay County, Illinois, on the first day of October, 1879, being six months' interest on railroad bond No. 1.

C. K. HENDEE,
Supervisor.

(On each margin:) $50.

And twenty-one other coupons of same tenor as the above, save as to date of payment and serial numbers from 20 to 40, inclusive.

EXHIBIT B.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, December 26th, 1879.

I, Thomas B. Needles, auditor of public accounts of the State of
69 Illinois, do hereby certify that the annexed instrument is a true, full, and correct copy of the certificate of C. K. Hendee as supervisor of Harter Township, Clay Co., Illinois, in regard to registration of bonds issued by said township in aid of the Ill. Southeastern Railroad, now on file in and forming part of the records of this office.

In testimony whereof, I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[AUDITOR'S OFFICE, ILLINOIS. L. S.]
T. B. NEEDLES,
Auditor Public Accounts.

STATE OF ILLINOIS,
County of Clay:

MAY 28, 1870.

To the Auditor of Public Accounts of the State of Illinois,
Springfield, Illinois:

SIR: I herewith transmit to you for registration in your office, under

the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the following bonds, being twenty in number *in number*, dated April 1st, 1870, amounting to $20,000.00 (twenty thousand dollars), payable on the first day of April, 1890, and bearing interest at the rate of ten per centum per annum, payable semi-annually. The bonds are issued by the township of Harter, in the county of Clay,
70 and State of Illinois, to the Illinois Southeastern Railroad Company, under and by authority of the provisions of an act to incorporate the Illinois Southeastern Railway Company, approved Feb. 25, 1867, an' an act amendatory thereof approved Feb. 24, 1869; and I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds, and to entitle them to the benefits of the said act last referred to, have been fully complied with, to the best of my knowledge and belief.

(Signed) C. K. HENDEE,
Supervisor of Harter Township.

(On the margin:) Vote 10th Nov'r, 1868.

Subscribed and sworn to by the said C. K. Hendee, before me, this 28th day of May, A. D. 1870.

(Signed) C. A. BEECHER,
Notary Public, W. Co., Ill.

(Endorsed:) Filed May 31st, 1870.—E. E. Lippincott, auditor public accounts.

(Also endorsed:) Filed June 24th, 1880.—J. A. Jones, clerk.

And afterwards, to wit, on the 24th day of June, in the year aforesaid, came the complainants, by their solicitors, and filed in said clerk's office their replication in said cause, which is in the words and figures following, to wit:

71 *Replication.*

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the circuit court, June term, A. D. 1880.

TOWNSHIP OF HARTER ET AL.
vs.
EDWARD RUTZ ET AL. } Bill for injunction, &c.

Complainants in the above-entitled cause, for replication to the answer of John A. Kernochan, one of the defendants to said bill of complaint, says that said bill is certain, sufficient, and true, and that said answer is uncertain, insufficient, and untrue, wherein it is contradictory to the bill, without which said answer is true.

W. J. HENRY AND G. A. HOFF,
Sol's for Complainants.

(Endorsed:) Filed June 24, 1880.—J. A. Jones, clerk.

And afterwards, to wit, on the 7th day of July, in the year aforesaid, came said complainants, by their solicitors, and filed in said clerks'

office a copy of agreement and records in said cause, which is in the words and figures following, to wit:

Agreement.

UNITED STATES OF AMERICA,
Southern District of Illinois:

THE TOWN OF HARTER ET AL.
vs.
JOHN A. KERNOCHAN ET AL.

72 In the circuit court of the United States, southern district of Illinois, June term, A. D. 1880. In chancery.

It is hereby mutually agreed and stipulated by and between the complainants and John A. Kernochan, one of the defendants, that this cause shall be heard on the bill of complainant, the answer of the said J. A. Kernochan and the replication thereto, and upon the following agreed state of facts:

First. That the defendant, John A. Kernochan, is the owner and holder of the twenty bonds, and coupons attached thereto, mentioned in defendants' answer to said bill, and that he acquired the same before due, and paid value therefor, without notice of any defence except that appearing in the law under which the bonds were issued and that appearing on the face of the bonds, and that a copy of said bonds, with the endorsements thereon, are correctly set forth as an exhibit to defendants' answer, and marked Exhibit A. That the supervisor and town clerk of Harter Township, on the first day of April, A. D. 1870, in behalf of said township, signed said bonds, the same having been signed by said supervisor and town clerk, the justices of the peace of said town not being present and took no part or action in the issue thereof. That afterwards, on the twenty-seventh day of May, A. D., 1870, said supervisor and town clerk delivered said bonds to the Springfield and Illinois Southeastern
73 Railway Company, and said bonds were by said last mentioned railway co. negotiated, and became the property of said J. A. Kernochan. That the supervisor of said town filed the preliminary affidavit set forth as Exhibit B in the defendants' answer, in the office of the auditor of public accounts of the State of Illinois, and that said bonds were registered in said auditor's office on the first day of June, A. D. 1870, and that said auditor annually thereafter certified, and there was levied and collected, a tax, off of the taxable property of said town, for the purpose of paying the interest on said bonds, and that said tax was paid on said bonds, until the filing of complainants' bill. That the Illinois Southeastern Railway Company on the third day of December, A. D. 1869, in pursuance of the laws of the State of Illinois, was consolidated with the Pana, Springfield and Northwestern Railway Co., and said consolidated railway company became a corporation, under the name and designation of the Springfield and Illinois Southeastern Railway Company; and that, by virtue of said consolidation, succeeded to all the rights of the constituent companies, so far as it was authorized to do by law, and no further; and that said town of Harter, before 1867, was organized as a town under the "Township Organization Laws."

That complainants are citizens of the State of Illinois, and tax-payers in said town; and that the said Kernochan is a citizen of the State
74 of Massachusetts and has been such a citizen for the past ten

years. That the papers hereto attached and marked Records shall be taken and regarded as the records, papers, and minutes, and files of said town.

W. J. HENRY,
Solicitor for Complainants.

GEO. A. SANDERS and N. M. BROADWELL,
For John A. Kernochan, def't.

RECORDS.

A proposition.

The following proposition is hereby submitted to the legal voters of the township of Harter, in the county of Clay, and State of Illinois, by the board of directors of the Illinois Southeastern Railway Company, to be voted upon at an election to be held in said town on the 10th day of November, A. D. 1868.

1st. That the town of Harter, in the county of Clay, in the State of Illinois, donate to the Illinois Southeastern Railway Company the sum of ($20,000.00) twenty thousand dollars, to be raised and paid as follows: One-third of said amount of twenty thousand dollars to be paid when the said railway company shall grade and tie a railroad through the whole of said township, from north to south, touching the incorporate town of Flora, within the limits as specified by order of the county
75 court, in the said township of Harter; said amount of one-third of said twenty thousand dollars to be raised by a special tax for that purpose, levied upon all the taxable property in the said town of Harter, and collected in the year 1869, as other taxes, and to be paid to the treasurer of the Illinois Southeastern Railway Company as soon as the same is collected: Provided, the said railroad is graded and timbered ready for the iron as set forth above. If the said railroad is not so graded and tied as aforesaid when the said tax is collected by the treasurer or collector of said co., then said treasurer or collector shall retain the said amount so collected in his hands for the term of two years from the first day of April, A. D. 1869; and if the said railroad is not graded then, and tied as above provided, then said amount shall be returned to the said township of Harter, to be disposed of as the town authorities may direct. One third of the sum of twenty thousand dollars, being the second installment thereof, shall be raised by the said township in the year of 1870, by the same means above provided for the first one-third, and be disposed of in the same way; and in the year 1871 the remaining one-third of said twenty thousand dollars shall be raised in the same way; and both last installments shall then be paid to the treasurer of the said railway company: Provided, that the said railroad shall, at the time of the collection of the said amount in 1871, have been fully completed
76 and cars running thereon through said township; and if the said railroad shall not have been completed and cars running thereon through said township, and if the said railroad shall not been *not been* completed when the said taxes are collected, the whole amount in the county treasurer of Clay County belonging to the said fund shall be returned to the supervisors of the town of Harter to be disposed of as other township funds.

2nd. It is hereby agreed and understood that if the requisite legislation can be obtained from the State legislature at the next session thereof, authorizing and empowering the town of Harter aforesaid to issue town-

ship bonds payable in five years, or a time thereafter not exceeding twelve years, at the option of the said town of Harter, bearing interest at the rate of ten per cent. per annum from the date of their delivery to the said railway company, then in that event the said Illinois Southeastern Railway Company shall take and receive the said amount of twenty thousand dollars in the bonds of said town of Harter in lieu of the amount to be raised by taxation as provided for in the first clause of this proposition; and in the case the said tax shall not be levied, but the treasurer of the said railway company shall be compelled to receive said bonds in lieu of and in discharge of said tax: Provided, that the bonds of said town of Harter shall not be delivered to the said railway company until the said railroad of said company shall be completed through said town and the cars be running thereon.

77 THOS. S. RIDGWAY,
Pres't Board Directors of Ills. S. E. R. W. Co.
C. C. BOGGS,
Sec'y Board Directors of Ills. S. E. R. W. Co.

Election notice.

Notice is hereby given that on Tuesday, November 10th next, at Flora, E. L. Howell's office, in the county of Clay, an election will be held for accepting or rejecting the above proposition from the Ills. Southeastern Railway Company, which election will be opened at 8 o'clock in the morning and will continue open until 6 o'clock in the afternoon. Dated at Flora this 20th of October, in the year of our Lord one thousand eight hundred and sixty-eight.

J. M. BILLINGS,
Town Clerk.

Canvass of election.

HARTER TOWNSHIP, *Nov. 10th*, 1868.

At a town meeting held at E. L. Howell's office, in the town of Flora, in the town of Harter, Clay County, and State of Illinois, on the 10th day of November, 1868, to vote on a donation of twenty thousand dollars to the Southeastern Railway Company, the meeting was called to order by J. M. Billings, town clerk. J. F. Addudle, on motion, was duly chosen moderator, who, after being duly sworn by J. M. Billings, town clerk, entered upon the duties of his office. The polls was opened; proclamation first being made at the door by the clerk; votes were then received for or against donation; at 6 o'clock the polls were closed
78 and the moderator proceeded to count the ballots, and found the number to be three hundred and forty-two (342), same number that appeared on the poll-book kept by the clerk.

The following is a statement of the canvass of the ballots cast as publicly canvassed by the moderator at said meeting. The donation, three hundred ballots (300); against donation, forty-two ballots (42). After which the meeting adjourned.

I certify this is a correct minutes of the meeting.

J. M. BILLINGS,
Town Clerk.

SP'C'L MEETING,
May 10th, 1870.

This day filed in the town clerk's office an application stating that a

special town meeting of Harter Township is necessary to the interest of said town, for the purpose of voting whether to levy a special tax to pay off the donation of twenty thousand dollars ($20,000.00) made to the Illinois Southeastern Railway company by said town at an election held for that purpose, or issue bonds to pay off the above donation. Said call or application was filed, signed by C. K. Hendee, supervisor, J. F. Wilcox and B. F. Cunningham, justices of the peace, and L. A. Micheals, town clerk, together with twenty-one freeholders, as required by law.

In response to the above, L. A. Micheals did warn a town meeting at W. B. Wilson's office, in Flora, onthe 20th day of May, A. D. 1870, to take into consideration and decide upon the question set forth in the above application. Said call was made by posting up 3 or more notices in the most public places in the town.

79 At a special town meeting held in Flora, Harter Township, Clay County, and State of Illinois, at Dr. W. B. Wilson's office, on the 20th day of May, A. D. 1870. The meeting was called to order by John McGannon, appointed by L. A. Micheals, town clerk, to act in L. A. Micheals' stead. W. S. Walker was also chosen as clerk of the election, and William Stansfield moderator; all of whom, being duly sworn by L. A. Micheals, town clerk in said town, entered upon the duties of their offices.

The polls were then opened for the purpose of voting whether to levy a special tax or issue bonds to pay off the donation made to the Illinois S. E. R. R. Co. by said town at an election held for that purpose. Proclamation thereof being first made by the clerk of the meeting, at twelve o'clock at noon, on motion of Mr. McGannon the meeting adjourned and polls closed for one hour till one o'clock p. m. Meeting was called to order at one o'clock p. m. by the moderator, and the polls opened pursuant to adjournment. The polls were kept open till four o'clock p. m. The result of the election was seventy-nine (79) votes for bonds and none for special tax; meeting closed.

JOHN McGANNON, *Clerk.*
W. S. STANSFIELD, *Moderator.*

APRIL 1ST, 1870.

80 Harter Township bonds were this day issued to the Springfield and Illinois Southeastern Railway Company to the amount of twenty thousand dollars ($20,000.)

MAY 27TH, 1870.

The above bonds were this day properly signed and turned over to Thomas S. Ridgway, president of the said railway company, taking his receipt for the same. Three coupons were also cut off, being one hundred and fifty dollars ($150) of the interest on said bonds.

(Endorsed:) Filed July 7th, 1880. J. A. Jones, clerk.

And afterwards, to wit, on Thursday the 26th day of August, at the June term of said court, in the year aforesaid, the following proceedings were had in said court and entered of record in said cause, to wit:

Decree.

THE TOWNSHIP OF HARTER, JAMES M. WILLiams, W. S. Walker,
v.
EDWARD RUTZ, TREASURER OF ILLINOIS; Thomas B. Needles, auditor of Illinois; Richard J. Burns, county clerk of Clay County; Edward H. Hawkins, treasurer of Clay County; John Lowman, collector of Harter Township; Rolla B. Henry, supervisor of said
81 township; J. W. Anderson, clerk of said township; Jesse Lawrence & Jerry F. Wilcox, justices of said township; John A. Kernochan & the unknown owners & bondholders of the bonds and coupons described in complainant's bill. } In equity.

And now, on this 26th day of August, 1880, come the parties, by their counsel, and submit to the court the complainants' motion to remand this cause to the circuit court of Clay County, Illinois; which motion, being heard and considered by the court, is overruled.

And thereupon, the parties, by their counsel, submit this cause to the court for final hearing on the pleadings & proofs; and the court, having heard and considered the same, and being fully advised in the premises, doth order and decree that the complainants' bill be dismissed and the injunction dissolved, and that the complainants pay the costs of this proceeding both in this court and in the Clay circuit court in which it originated.

And afterwards, to wit, on Wednesday, the 8th day of September, at the term and year aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

Order allowing appeal.

TOWNSHIP OF HARTER ET AL.
v.
THOMAS B. NEEDLES ET AL. } In chancery.

82 And now on this 8th day of September, 1880, come again the parties, by their counsel, and, on motion of the complainant, the Town of Harter, it is ordered by the court that the township of Harter be allowed an appeal to the Supreme Court of the United States not to operate as a supersedeas, on its entering into bond to the defendants in the penalty of $500, conditioned as the law directs, with security, to be approved by the court, within sixty days from the rendition of the final decree.

And afterwards, to wit, on the 8th day of October, in the year aforesaid, came the complainants, by their solicitor, and filed in said clerk's office their bond in said cause, which is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, the Town of Harter, in the county of Clay and State of Illinois, principal, and G. A. Hoff & W. J. Henry as securities, are held and firmly bound unto John A. Kernochan in the full and just sum of five hundred dollars, to be paid to the said John A. Kernochan, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and date' this 15th day of September, A. D. 1880.

Whereas, lately at a certain term of the circuit court of the
83 United States within and for the southern district of Illinois, to wit, the June term, A. D. 1880, in a suit depending in said court, wherein the town. of Harter and others are complainants, and Thomas B. Needles and others were defendants, in which a decree was rendered against the said town. of Harter and others, complainants, dismissing the bill in said cause at the costs of the complainants; and the said town. of Harter from said decree has prayed an appeal to the Supreme Court of the United States, which said prayer for an appeal has been granted upon the said town. of Harter, executing a bond, with security, to be approved by the court in the penal sum of five hundred dollars:

Now the conditions of the above obligation is such that if the said town. of Harter shall prosecute its appeal to effect, and answer all damages and costs if it fails to make the said cause good, then the above obligation to be void, else to remain in full force and virtue.

PEARLY P. BROWN, [SEAL.]
Supervisor of Harter Township, of Clay Co., Ill.
G. A. HOFF, [SEAL.]
W. J. HENRY, *Sureties.* [SEAL.]

Sealed and delivered in presence of—
JOHN H. MCENDREE. [SEAL.]
E. A. COOK. [SEAL.]

84 STATE OF ILLINOIS,
Shelby County, ss:

W. J. Henry, one of the securities on the above bond, makes oath and says that he is worth in real and personal property, situate in this State, and not exempt from execution, more than twenty thousand dollars, after payment of all his just debts and liabilities.

W. D. HENRY.

Subscribed and sworn to before me by W. J. Henry this 7th day of October, A. D. 1880.

[N. P., L. S.]

E. A. COOK,
Notary Public.

Approved Oct. 8th, 1880.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed Oct. 8th, 1880. J. A. Jones, clerk.

85 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States, in and for said southern district of Illinois, do hereby certify that the fore-

going is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein the township of Harter, James M. Williams, and W. S. Walker are complainants, and Edward Rutz, treasurer of Illinois; Thomas B. Needles, auditor of Illinois; Richard J. Burns, county clerk of Clay County; Edward H. Hawkins, treasurer of Clay County; John Lowman, collector of Harter Township; Rolla B. Henry, supervisor of said township; J. W. Anderson, clerk of said township; Jesse Lawrence and Jerry F. Wilcox, justices of said township; John A. Kernochan, & the unknown owners & bondholders of the bonds & coupons described in complainants' bill, are defendants, as fully as same appear of file and of record in my said office.

In testimony whereof, I have hereunto set my hand and the seal of said court, this eleventh day of October, A. D. eighteen hundred & eighty, and of our Independence the one hundred & fifth year, at Springfield, in said district.

[SEAL.] J. A. JONES, *Clerk.*

86 The complainants in said original bill complain to this honorable court that errors have intervened in the foregoing record and proceedings to their prejudice, and that said errors are in these:

First. The court erred in overruling the motion to remand this cause to the circuit court of Clay County, Illinois, for the following reasons:

1st. That said circuit court of the United States has no jurisdiction of said cause.

2nd. That the petition, &c., for the removal of said cause was not filed in the State court at the first term thereof at which said cause could have been tried.

3rd. That the petition and bond were not filed in said State court until after a decree had been entered in said cause in said State court.

4th. That there was no controversy existing between the petitioner for the removal of said cause and said complainants.

5th. That the controversy, if any, is not wholly between citizens of different States, nor between the complainants and the parties seeking to remove said cause.

87 6th. That the parties petitioning for the removal of said cause had not filed certified copies of the record and proceedings in said cause on the first day of the term of said circuit court, as required by the act of Congress of March 3rd, 1875, but instead thereof have brought up and filed the original papers which belong to the files of the State court.

Second. The court erred in dismissing complainants' bill, for the following reasons:

1st. That the act entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 25th, 1867, did not authorize and empower said township to vote a donation and issue bonds.

2nd. That the proposition made by the Illinois Southeastern Railway Company to the electors of the town. of Harter was for a money donation and not for a donation in bonds.

3rd. That the election held on the 10th day of November, 1868, and recited in said bonds, did not and could not authorize said township to issue bonds.

4th. That said election of November 10th, 1868, was illegal and conferred no power upon said township to issue bonds.

88 5th. That the amendatory act of February 24th, 1869, is unconstitutional, and that the bonds attempted to be issued under it are issued without warrant or authority of law and therefore void.

6th. That the supervisor and town clerk had no authority to issue bonds to the Springfield & Illinois Southeastern Railway Company.

7th. That said bonds were dated on the 1st day of April, A. D. 1870, and registered in the office of the auditor of public accounts on the 13th day of May, 1870, and that the preliminary oath by the supervisor was not made until 28th day of May, 1870.

8th. That the bonds were not registered under or in pursuance of the preliminary oath of the supervisor of said township.

9th. That said bonds were not entitled to registration.

Third. The court erred in dismissing complainants' bill and in not granting the relief therein prayed.

Fourth. The court erred in dismissing complainants' bill against the State, county, and township officers, and vacating the decree of the State court as to them.

Complainants therefore pray that said decree overruling the motion to remand said cause and dismissing said bill may be reversed and the cause remanded.

W. J. HENRY,
Sol'r for Appellants.

(Indorsement on cover:) No. 996. The Township of Harter, appellant, vs. Edward Rutz, treasurer of the State of Illinois, John A. Kernochan, et al. S. Illinois C. C. U. S. Filed 15th October, 1880.